Affirmed.

Harlan

Field

Submitted Nov. 7. 1876

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~278.~~ 58

EDWARD CLARK, TRUSTEE, AND LOUISA McGHAN, APPELLANTS,

vs.

THE COMMISSIONERS OF THE FREEDMAN'S SAVINGS AND TRUST COMPANY ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 19, 1876.

3

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1 *Complainant's bill,*

In the supreme court of the District of Columbia, this 5th day of April, 1875. In equity.

EDWARD CLARK, TRUSTEE, AND LOUISA McGHAN, plaintiff,
vs.
FRANCIS W. EATON, WIDOW OF DANIEL L. Eaton, deceased; Paul Eaton & Isabella Eaton, minor children of said Francis W. Eaton and Daniel L. Eaton, deceased; John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings & Trust Company; The Freedman's Savings & Trust Company, Andrew C. Bradley, Alexander R. Shepherd, and Marshall Jewell, Postmaster-General, defendants.
} No. 4260, dock. 14.

To the supreme court of the District of Columbia, holding an equity court in and for said District:

The plaintiffs complaining to this honorable court show as follows:

I.

The plaintiffs are residents of the city of Washington in the District of Columbia. The plaintiff, Edward Clark, sues as the trustee for the plaintiff, Louisa McGhan, as hereinafter stated and set forth, and the plaintiff, Louisa McGhan, sues in her own right.

2 II.

The defendant, Francis W. Eaton, is the widow of Daniel L. Eaton, deceased, trustee as hereinafter set forth. The defendants, Paul Eaton and Isabella Eaton, are the minor children and heirs-at-law of said Daniel L. Eaton, deceased. The defendants, John A. J. Creswell, Robert Purvis, and Robert H. T. Liepold, are the commissioners of the defendant, the Freedman's Savings and Trust Company, appointed and acting under and by virtue of an act of Congress approved June 20, 1874, entitled "An act amending the charter of the Freedman's Savings and Trust Company, and for other purposes," and as such commissioners are sued. The defendant, the Freedman's Savings and Trust Company, is a body corporate, duly incorporated by act of Congress approved March 3, 1865, entitled "An act to incorporate the Freedman's Savings and Trust Company," having its principal place of business in the city of Washington aforesaid, and as such body corporate is sued. The defendants, Andrew C. Bradley and Alexander R. Shepherd, are residents of the said city of Washington. The defendant, Marshall Jewell, is the Postmaster-General of the United States, and as such is sued.

III.

The plaintiffs allege that Francis McGhan, now deceased, being then the owner in fee simple thereof, and his wife, the said plaintiff, Louisa McGhan, on the 15th day of August, 1864, by their deed conveyed to

the plaintiff, Edward Clark, in trust for the sole use and benefit of the said Louisa during her life, and to convey the same in fee simple or in trust by way of mortgage for such uses and purposes as the said Louisa, in writing, might request and direct, and upon the further trust to convey any interest and estate therein that might remain undisposed of during her life time in the manner aforesaid; in the event of her death
3 to the said Francis McGhan, his heirs or assigns; the following described real estate situate in the said city of Washington, to wit: Part of lot number four (4) in square number three hundred and seventy-seven (377), beginning for the same at the southwest corner of said lot on E street north, thence east twenty-four (24) feet, thence north one hundred and fifty-nine (159) feet to an alley, thence west twenty-four (24) feet, and thence south one hundred and fifty-nine (159) feet to said E street to the place of beginning. All of which will more fully appear by reference to a copy of said deed hereto annexed marked Exhibit A, and which plaintiffs pray may be taken as a part of this bill.

IV.

The plaintiffs further allege that the said Francis McGhan became indebted to the defendant, Freedman's Savings and Trust Company, to wit, on the 20th day of June, 1870, in the sum of ten thousand ($10,000) dollars, evidenced by a certain promissory note bearing said date, signed by said Francis and Louisa for said sum, being money borrowed from said company by the said Francis, which became due and payable in one year from said date, with interest at the rate of ten (10) per centum per annum from said date, payable semi-annually, and in trust, to secure the payment thereof, the plaintiffs and the said Francis McGhan executed and delivered their deed conveying the premises hereinbefore described to Daniel L. Eaton, now deceased, the said Eaton being at the time of said conveyance to him the actuary and secretary of the said defendant, Freedman's Savings and Trust Company.

A copy of said deed with the time and place of record endorsed thereon, is hereto annexed marked Exhibit B, which plaintiffs pray may be taken as a part of this bill. The said Francis McGhan died
4 in the said city of Washington on or about the 27th day of October, 1874, and that said Eaton died intestate in the said city on the 16th day of February, 1873.

V.

The plaintiffs further allege that the aforesaid note being then unpaid, together with fourteen hundred ($1400) dollars accrued interest thereon, on or about the 5th day of April, 1872, a notice of sale of said described part of lot four (4) was published in the National Republican, one of the daily newspapers printed and published in the said city of Washington, that said property would be sold by said Eaton, as trustee, as aforesaid, on the 24th day of April, 1872, and notices of the postponement of said sale to the 15th day of June, 1872, thence to the 22d day of June, 1872, and thence to the 1st day of July, 1872, were also published in said paper, copies of which notice of sale and notices of the postponements thereof are hereto annexed, marked Exhibit C, which plaintiffs pray may be taken as a report of this bill.

VI.

The plaintiffs allege that, in pursuance of said notice of sale and the

last postponement thereof, the said Daniel L. Eaton, being at said time still the actuary and secretary of the defendant the Freedman's Savings and Trust Company, and the principal business manager of said company, on said 1st day of July, 1872, pretended to sell said premises hereinbefore described. That at the time of said pretended sale not to exceed eight persons in number, including the trustee, auctioneer, and crier of said sale, were present, and no bid was made on said premises other than as hereinafter set forth. That said premises were offered for sale as aforesaid at a time when a very large proportion of those persons who were able to purchase so valuable property were absent
5 from said city. That at said time, and for a long time prior thereto and thereafter, the said plaintiff Louisa McGhan was sick, confined to her bed, and by reason thereof was unable to take care of and look after her business interests. That her said husband, Francis McGhan, was at said time and continuously up to his death, dissipated in his habits and neglectful of his business, all of which was well known to the said Eaton. And the plaintiffs further allege and charge that there was no bid made for said premises at said pretended sale, except that the said Daniel L. Eaton bid therefor the sum of thirteen thousand ($13,000) dollars. That said premises were pretended to be sold upon said bid, and on account thereof the said Eaton executed to the said defendant, the Freedman's Savings and Trust Company, a certain instrument in writing, not under seal, and the acknowledgment to which is without any date and wholly defective, a copy of which is hereto annexed, marked Exhibit D, which plaintiffs pray may be taken as a part of this bill; all of which will more fully appear upon reference to the record thereof, such record not being made until the 4th day of February, A. D. 1873, in Liber No. 708, folio No. 170, of the Land Records of the District of Columbia. And the plaintiffs further aver and charge that at the time of the said pretended sale the said property was reasonably worth in the market the sum of twenty thousand ($20,000) dollars.

VII.

The plaintiffs further aver and charge that on the 6th day of June, 1873, the said defendant Bradley executed a lease of said described premises to the United States for the use of the Post Office Department for a period of three years with the privilege of a renewal thereof for two years, for the rental of forty-two hundred ($4,200) dollars per
6 year; and afterwards, to wit, on the 9th day of June, 1873, executed and delivered a deed of trust thereon to John W. Alvord and George W. Stickney, to secure to the said defendant, the Freedman's Saving and Trust Company, the sum of seventeen thousand ($17,000) dollars, payable as follows, to wit: twenty-four hundred ($2.400) in one year, twenty-six hundred and fifty ($2,650) dollars in two years, twenty-nine hundred ($2,900) dollars in three years, thirty-one hundred and fifty ($3,150) dollars in four years, and fifty-nine hundred ($5,900) dollars in five years from the date of said deed of trust, with interest at the rate of eight (8) per cent. per annum, payable semi-annually, and afterwards, to wit: on the 16th day of June, 1873, the said defendant, Freedman's Savings and Trust Company, executed and delivered a quit-claim deed for said described property to the said defendant Bradley, for an expressed consideration of eighteen thousand and five hundred ($18,500) dollars, and afterwards, to wit, on the 27th day of August, 1874, the said defendant Bradley and wife executed and delivered a quit-

claim deed therefor to the said defendant Shepherd, for an expressed consideration of eighteen thousand ($18,000) dollars. And plaintiffs further, on information and belief, aver and charge, that said defendant Shepherd assumed the payment of the notes executed by said defendant Bradley, as aforesaid, for the said several sums, and that said notes yet remain unpaid with the exception of twenty-four hundred ($2,400) dollars, and that no other consideration was paid or promised to be paid by either said defendant, Bradley, or defendant Shepherd, than the amounts specified in the notes hereinbefore set forth, executed by said Bradley to said defendant, Freedman's Savings and Trust Company. And they further aver that said defendants Bradley and Shepherd have since said 6th day of June, 1873, received from the United States
7 Government as the rent of and for said described property under said lease the following sums of money, to wit: on the 30th day *af* June, 1874, the sum of four thousand and four hundred and eighty dollars and eighty-six cents ($4,480.86); on the 30th day of September, 1874, the sum of one thousand and fifty ($1,050) dollars; on the 31st day of December, 1874, the sum of one thousand and fifty ($1,050) dollars; and on the 31st day of March, 1875, the further sum of one thousand and fifty ($1.050) dollars; and a like sum will become due every three months thereafter so long as said lease continues. And they make copies of said lease, marked Exhibit E; of said deed of trust from said defendant Bradley to said Alvord and Stickney, marked Exhibit F; of said deed from said defendant, Freedman's Savings and Trust Company, to said defendant Bradley, marked Exhibit G; and of said deed from said defendant Bradley to said defendant Shepherd, marked Exhibit H, exhibits to this bill, and pray that the same may be taken as a part thereof.

VIII.

The plaintiffs allege that the said Daniel L. Eaton never rendered, nor has the defendant, the Freedman's Savings and Trust Company, or any one on account of said company, ever rendered unto the plaintiffs, or either of them, or to the said Francis McGhan, an accounting of the proceeds of the said pretended sale before mentioned and set forth, or of the disposition thereof; and the plaintiffs further allege that the defendant, the Freedman's Savings and Trust Company, has never surrendered unto the plaintiffs, or either of them, or to the said Francis McGhan, the aforesaid note of ten thousand ($10,000) dollars, nor have the said defendants, or either of them, ever accounted to the said plaintiffs, or either of them, or to the said Francis McGhan, for the rents and profits of the said premises hereinbefore set forth or any part thereof.

8 IX.

And the plaintiffs further allege that said defendant Marshall Jewell, as Postmaster-General as aforesaid, has the charge of the Post-Office Department of the United States, and is charged with the disbursements of moneys on account thereof, and that one thousand and fifty ($1,050) dollars will become due and payable on the 30th day of June, 1875, and thereafter other rents will become due and payable on account of the use and occupancy of said premises by said department.

And the plaintiffs now tender themselves ready to pay to the said defendant, Freedman's Savings and Trust Company, or to the said commissioners, whatever sum may be ascertained to be due on account of said note of ten thousand ($10,000) dollars, so soon as the same can be

ascertained by an accounting of the matters and things hereinbefore set forth, together with any charges, legal or equitable, on account of any moneys paid by said defendant on account of the premises aforesaid.

Plaintiffs therefore aver and charge that by reason of all the premises aforesaid, and especially of the fact above set forth, that the said Eaton, attorney and trustee of the said McGhan and wife, became and was the pretended bidder and purchaser at his own sale, when he was also sustaining said relation of office, and agent of said Freedman's Saving and Trust Company, to whom he caused said pretended conveyance to be made under and pursuant to his said bid, and of the fact of the inadequacy of price as hereinbefore stated, and of the absence of all competition in bidding at said pretended sale, and of the inopportune time of making the same, and of the failure of said Freedman's Saving and Trust Company to render any account of said pretended sale, and the non-surrender of said note for $10,000, said pretended sale is void in equity, and should be so decreed.

9 And plaintiffs further charge that, by reason of said pretended conveyance by said Eaton to said Freedman's Saving and Trust Company not being under seal, and of the acknowledgment thereof being without date, no title passed thereunder to said Freedman's Saving and Trust Company, nor to any one holding under said company, but the title to said premises remains in these plaintiffs unaffected by said pretended sale and conveyance, and now does so remain unaffected by said pretended sale and conveyance, subject only to the equities created by said deed of trust to the said Eaton.

PRAYER.

And the plaintiffs therefore pray this honorable court as follows:

First. That the process of subpœna may be issued against said defendants, Francis W. Eaton, Paul Eaton and Isabella Eaton, for which last named two defendants the plaintiffs ask a suitable person guardian ad litem may be appointed hereby, John A. J. Creswell, Robert Purvis, Robert H. T. Leipold, the Freedman's Saving and Trust Company, Andrew C. Bradley, Alexander R. Shepherd, and Marshal Jewell, as aforesaid, requiring them to appear and answer this bill.

Second. That, upon a hearing, said pretended deed of conveyance by said Daniel L. Eaton to the said defendant the Freedman's Savings and Trust Company, and by the said defendant Bradley to the said Alvord and Stickney, and by the said defendant Freedman's Saving and Trust Company to the said defendant Bradley, and by the said defendant Bradley to said defendant Shepherd, may be decreed null and void and held for naught, and that the said notes executed by the said

10 defendant Bradley to the said defendant the Freedman's Savings and Trust Company may be decreed cancelled and held for naught.

Third. That an accounting may be had of the rents, issues, and profits of said premises, and that the amount thereof may be applied on account of the said note of ten thousand ($10,000) dollars.

Fourth. That the said lease of said premises may be decreed to inure to the benefit of the plaintiffs herein.

Fifth. That said defendant Jewell may be ordered to pay the rents hereafter to become due and payable into this honorable court, to be disposed of according to the judgment and decree thereof in this cause, and that an injunction be granted against the said defendant Jewell

enjoining him from paying said rents or any part thereof to either of his co-defendants until the further order of this court in the premises.

Sixth. That the said defendant the Freedman's Savings and Trust Company, and the said defendant commissioners be enjoined from selling, transferring, or otherwise disposing of any of the notes hereinbefore specified.

Seventh. That the said defendants Shepherd and Bradley shall be respectively required to account for and pay over the moneys received by them on account of rents, as set forth in this bill, and that said Shepherd be enjoined from conveying or in any wise incumbering said premises.

11 Eighth. That the court will grant such other and further relief as may be necessary in the premises.

LOUISA McGHAN.
EDWARD CLARK.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I do solemnly swear that I have heard read the bill by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

LOUISA McGHAN.

Subscribed and sworn before me this 26th day of March, A. D., 1875.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

SHELLABARGER & WILSON,
J. G. BIGALOW,
Plaintiff's Solicitors.

EXHIBIT A.

This indenture, made the 15th day of August, A. D. 1864, between Francis McGhan and Louisa McGhan, his wife, of the city of Washington, in the District of Columbia, of the first part, and Edward Clark, of the said city, of the second part, witnesseth:

That the said Francis McGhan and his said wife, for and in consideration of the trusts hereinafter mentioned and declared and the further consideration of the sum of ten dollars, in lawful money of the United States, to them now in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed and conveyed, and do by these presents, grant, bargain, sell, alien, enfeoff and convey unto the said party of the second part, his heirs and assigns, all that certain piece or parcel of ground situate and lying in the said city of Washington, and being known

12 and described as being the western part of lot No. 4, in square No. 377, and being contained within the following metes and bounds, beginning for the same at the southwestern corner of said lot and thence running east along the line of North E street 24 feet, and thence north 159 feet to the rear line of said lot and the public alley, and thence west along said line 24 feet to the northwestern corner of said lot, and thence south 159 feet to said street and place of beginning, together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in any wise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and

all the right, title, interest, and estate, either at law or in equity or otherwise however, of the said parties of the first part, or either of them, of, in, and to the said piece or parcel of ground and premises and appurtenances, to have and to hold the said piece or parcel of ground and premises and appurtenances unto and to the use of the said Edward Clark, his heirs and assigns: In and upon the trusts, nevertheless, hereinafter mentioned and declared and for no other use, trust or purpose whatsoever, that is to say, in trust for the sole use and benefit of said Louisa McGhan, the wife of said Francis McGhan, for and during the term of her natural life, free from all control and ownership by her said husband, and free and clear from all the debts, contracts, and obligations of her said husband; to permit the said Louisa McGhan to use and occupy the said piece or parcel of ground, and the rents, issues and profits thereof, to take, have, and apply to and for her sole use and benefit. And upon this further trust, at any time hereafter, the said piece or parcel of ground and premises, or any part thereof, to sell, dispose of, and convey absolutely in fee simple or in trust by way of mortgage to such person or persons, and for such uses and purposes, as the said Louisa McGhan shall and may in writing request and direct, her present or any future coverture notwithstanding. And upon this further trust, at and upon the decease of said Louisa McGhan, the said piece or parcel of ground and premises, or so much thereof and such interest and estate therein, if any, as may then remain undisposed of as hereinbefore provided, to convey to said Francis McGhan, his heirs or assigns, at his or their cost and expense.

13 In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

FRANCIS McGHAN, [SEAL.]
LOUISA McGHAN, [SEAL]

Signed, sealed and delivered in presence of—
JOHN S. HOLLINGSHEAD.
JOHN D. BLOW.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John S. Hollingshead, a notary public, duly commissioned and qualified in and for the county of Washington in said District, do hereby certify that Francis McGhan, and Louisa his wife, parties to a certain deed bearing date on the 15th day of August, A. D. 1864, and hereto annexed, personally appeared before me in the said county, and the said Francis McGhan and Louisa his wife being personally well known to me as the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Louisa McGhan being by me examined privily and apart from her said husband, and having the contents of said deed fully explained to her, she acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same and wished not to retract it.

Given under my hand and notarial seal this 15th day of November, A. D. 1864.

JOHN S. HOLLINGSHEAD.
Notary Public.

EXHIBIT B.

This indenture made this 20th day of June, in the year 1870, between Louisa McGhan and Francis McGhan, her husband, of the city of Washington, D. C., and Edward Clark of the same place, trustee for Louisa McGhan, of the first part, and Daniel L. Eaton, of the same place, of the second part:

Whereas the said Louisa McGhan and her husband, Francis McGhan, stand indebted to the Freedman's Savings and Trust Company, a body corporate doing business in Washington City, aforesaid, in the full and just sum of ten thousand (10,000) dollars evidenced by
14 their joint and several promissory note for that amount, bearing even date herewith and made payable twelve months after date, to the order of said Freedman's Savings and Trust Company, with interest at the rate of ten per centum per annum, said interest payable half-yearly, and it is the desire of said parties hereto of the first part to secure the payment of said note, according to the tenor and effect thereof, and they therefore execute these presents:

Now, therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar in lawful money of the United States to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, his heirs and assigns forever, all that certain part of lot, piece, or parcel of ground, situate, lying and being in the city of Washington, in the District of Columbia, known and designated as part of lot numbered four (4), in square numbered three hundred and seventy-seven (377), of the authentic ground plan or plat of said city of Washington, commencing for the said part of lot at the northwest corner of said lot on E street north, and running thence north one hundred and fifty-nine (159) feet to the alley in the rear of said lot; thence east with said line of said alley twenty-four (24) feet; thence south one hundred and fifty-nine (159) feet to said E street north; and thence west with the line of E street north, twenty-four (24) feet to the place of beginning, being the same lot heretofore conveyed to said Edward Clark in trust for said Louisa McGhan, subject to a certain amount of ground-rent, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the said parties of the first part of, in, to, or out of the said piece or parcel of ground and premises, to have and to hold the said piece or parcel of ground and premises and appurtenances unto and to the use of the said party of the second part, his heirs, executors, administrators and assigns. In and upon the trusts, nevertheless,
15 hereinafter mentioned and declared, that is, in trust, to permit the said Louisa McGhan and her husband, Francis McGhan, their heirs or assigns, to use and occupy the said described premises and the rents, issues and profits thereof to take, have, and apply to and for their sole use and benefit until default be made in the payment of said promissory note or interest thereon, or any proper cost, charge, commission, half commission or expenses in and about the same. And upon full payment of all of said note and the interest thereon, and all other proper costs, charges, commissions, half commissions and expenses, at

any time before the sale hereinafter provided for, to release and recover the said described premises unto the said Edward Clark, trustee for said Louisa McGhan, her heirs and assigns, at his, her, or their cost.

And upon this further trust, that upon default being made in the payment of said promissory note, or the interest thereon when due, or any proper cost, charge, commission, half commission, or expense in and about the same, then, and at any time thereafter, to sell the said piece or parcel of ground and premises at public auction upon such terms and conditions and at such time and place and after such previous public advertisement, as said party of the second part or his heirs in the execution of this trust shall deem advantageous and proper, and to convey the same in fee simple to the purchaser or purchasers thereof at his, her, or their cost and expense, and of the proceeds of said sale or sales, first to pay all proper costs, charges and expenses, and to retain as compensation a commission of five per cent. out of the amount of said sale or sales; secondly, to pay whatever may then remain unpaid of said note and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder, if any, to the said Louisa McGhan, her heirs or assigns.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

LOUISA McGHAN. [SEAL.]
FRANCIS McGHAN. [SEAL.]
EDWARD CLARK,
Trustee for Louisa McGhan.

Signed, sealed, and delivered in presence of—
EDMUND F. BROWN.

16 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Edmund F. Brown, a notary public in and for the county aforesaid, in the said District of Columbia, do hereby certify that Francis McGhan, husband of Louisa McGhan, and Edward Clark, trustee of Louisa McGhan, two of the parties to a certain deed bearing date on the 20th day of June, A. D. 1870, and hereto annexed, personally appeared before me in the county and District aforesaid, the said Francis McGhan and Edward Clark, trustee as aforesaid, being personally well known to me to be the persons who executed said deed, and acknowledged the same to be their act and deed; and the said Louisa McGhan, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same and that she wished not to retract it.

Given under my hand and notarial seal this 20th day of June, A. D. 1870.

[SEAL.] EDMUND F. BROWN,
Notary Public.

EXHIBIT C.

By B. H. Warner, real estate broker and auctioneer, No. 720 Seventh street, between G and H. Trustee's sale of an elegant four-story press-brick front residence, with brownstone trimmings, on the north side of E street, between Ninth and Tenth streets.

By *a* virtue of a deed of trust to me dated June 20, 1870, and duly re-

corded in liber 619, folio 209, one of the land records of Washington County, District of Columbia, and by direction of the party thereby secured, I will sell at public auction to the highest bidder, at 5 o'clock, on Wednesday afternoon, April 24, 1872, on the premises, that part of lot 4 in square 377, as laid down on the ground-plat of Washington City, D. C., comprised within the following metes and bounds, viz: Commencing for the same on E street at the southwest corner of said lot, and thence north 159 feet; thence east 24 feet; thence south 159 feet, and thence west 24 feet to place of beginning, with im-
17 provements thereon, subject to a certain ground-rent, which will be made known on the day of sale and which can be purchased for a nominal consideration. Title perfect. It is improved by house No. 915 E street, which is one of the most desirable in the city, either for a gentleman's residence or for a private boarding-house. The ceilings are high, the rooms spacious, and all its appointments elegant. All modern improvements. Terms: $5,000 cash, balance in six, twelve, eighteen and twenty-four months, with 10 per cent. interest, secured by a deed of trust on the property. $250 down when the property is struck off. Stamps and conveyancing at the cost of the purchaser. Terms to be complied with in seven days after the sale, or the property to be resold at the risk and cost of the defaulting purchaser.

DANIEL L. EATON,
Trustee.
B. H. WARNER,
Auctioneer.

The above sale is postponed until Saturday, June 15, 1872, same hour and place.

DANIEL L. EATON, *Trustee.*
B. H. WARNER, *Auctioneer.*

The above sale is postponed until Saturday, June 22, 1872, same hour and place.

DANIEL L. EATON, *Trustee.*
B. H. WARNER, *Auctioneer.*

The above sale is postponed until Monday, July 1, 1872, at 6 o'clock p. m., when it will positively take place.

DANIEL L. EATON, *Trustee.*
B. H. WARNER, *Auctioneer.*

EXHIBIT D.

This indenture made the first day of July, A. D. one thousand eight hundred and seventy-two, (1872,) by and between Daniel L. Eaton of Washington City, District of Columbia, trustee, of the first part, and the Freedman's Savings and Trust Company of Washington, District of Columbia, duly incorporated by an act of Congress, and authorized and empowered to hold property under the name and style as above of the second part.

Whereas a certain Edward Clark, trustee, Francis McGhan and Louisa McGhan, his wife, heretofore made and executed a certain
18 deed of trust bearing date on the 20th day of June, A. D. 1870, and duly recorded in liber 619, folio 209, one of the land records for Washington County, District of Columbia, and thereby conveyed unto the party of the first part, his heirs and assigns, all that certain

piece or parcel of ground situated and lying in Washington City, District of Columbia, and being hereinafter fully described in trust to secure a certain debt therein fully set forth and mentioned, and upon any default therein to sell the said ground and premises; and whereas default having been made in the matter of the debt secured by said deed of trust, the said party of the first part, trustee as aforesaid, being thereto directed by the party secured by said deed of trust and in the execution of the trust in said deed of trust declared, proceeded to make sale of said piece or parcel of ground and premises by public advertisement thereof, and did on the first day of July, A. D. 1872, at the time and place advertised as aforesaid for the sale thereof, sell the said piece or parcel of ground at public auction to the party of the second part, who being the highest bidder, at and for the sum or consideration hereinafter mentioned, has now complied with all the terms of said sale, and the said party of the first part having out of the proceeds of said sale first paid and discharged all costs of sale:

Now, therefore, this indenture witnesseth, that the said Daniel L. Eaton, trustee as aforesaid, for and in consideration of the premises and the sum of thirteen thousand ($13,000) dollars in lawful money of the United States to him, the party of the first part, as trustee, in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, and conveyed, and doth by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, the said Freedman's Savings and Trust Company of Washington, D. C., its successors and assigns, in fee simple, all that certain piece or parcel of ground lying in Washington City, District of Columbia, and being comprised within the following metes and bounds, viz, part of lot 4, in square number three hundred and seventy-seven (377), as the same is laid down on the plat or plan of said city, commencing for the same at the southwest corner of said lot on E street north, and running thence north one hundred and fifty-nine (159) feet to the alley in the rear of said lot; thence
19 east twenty-four (24) feet; thence south one hundred and fifty-nine (159) feet; and thence west with the line of E street twenty-four (24) feet to the place of beginning, together with all the improvements, ways, easements, rights, privileges, appurtenances and hereditaments, to the same belonging or in any wise appertaining, and all the reversions, rents, issues, profits thereof, and all the right, title, interest, and estate, legal, equitable, and otherwise of the said party of the first part, trustee as aforesaid, of, in, and to the said piece or parcel of ground and premises; to have and to hold the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, its successors and assigns, to its sole use, benefit, and behoof forever.

In testimony whereof the said party of the first part, as trustee, hath hereunto set his hand and seal on the day and year first hereinbefore written.

D. L. EATON.

Signed, sealed, and delivered in presence of—
BRAINARD H. WARNER.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, B. H. Warner, a notary public, in and for the county aforesaid, do hereby certify that D. L. Eaton, trustee, party to a certain deed bearing

date on July 1, 1872, and hereto annexed, personally appeared before me in the county aforesaid, the said D. L. Eaton, trustee, being personally well known to me to be the person who executed the said deed and acknowledged the same to be his act and deed.

[SEAL.] BRAINARD H. WARNER,
Notary Public.

EXHIBIT E.

This indenture made this sixth day of June, in the year one thousand eight hundred and seventy-three, by and between Andrew C. Bradley, of Washington, D. C., of the first part, and John A. J. Creswell, Postmaster General, for and in behalf of the United States of America, of the second part, witnesseth:

That the said party of the first part, for and in consideration of
20 rents, covenants, and agreements to be paid, kept and performed by the party of the second part, doth hereby devise and lease unto the said party of the second part those certain premises, with the four-story brick house and brick stable thereon, situated on the north side of E street between 9th and 10th streets in the city of Washington, in the District of Columbia, and known as house number 915 on said E street northwest, to have and to hold to the party of the second part for the term of three years from and after the 5th day of June, anno Domini one thousand eight hundred and seventy-three, with the privilege to the said party of the second part of a renewal of the said term for the further period of two years; the said party of the second part yielding and paying therefor the annual rent during the said term, and a subsequent renewal thereof as aforesaid, of four thousand two hundred (4,200) dollars, payable quarterly on the 30th day of September, the 31st day of December, the 31st day of March, and the 30th day of June.

And it is hereby mutually understood and agreed by and between the parties hereto, that this lease is made subject to an appropriation by Congress for the payment of the rental herein stipulated for, and that no payment shall be made to said party of the first part on account of such rental until such appropriation shall be available, and that as soon as practicable after such appropriation shall become available, the arrears of the rent due shall be paid in full, and thereafter payment shall be made at the times and in the manner hereinbefore stipulated. And it is hereby agreed by said party of the first part, that he will at his own expense remove such partitions and construct such partitions, with necessary doorways and doors in said building, and construct such water-closets, with the necessary water connections, as may be required by the Supervising Architect of the Treasury Department; and that he will leave in good order all gas fixtures now in said building for the use of the said party of the second part, and the said party of the second part will keep the said premises in good repair during the continuance of this lease and any renewed term thereof, and the expenses of any alterations of or additions to the interior, not herein otherwise provided for, so as to adapt it to the use of the United States and not calculated to damage the premises, are to be borne by the party of the second part; and all
21 taxes and assessments legally levied or charged upon the property are to be paid by the party of the first part.

And it is hereby further provided that in case the premises or any part thereof during said term or the renewal thereof be destroyed or injured by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then the rent hereinbefore reserved,

or a just and proportionable part thereof, according to the extent and nature of the injury sustained, shall be suspended or abated until the said premises shall have been put in proper condition for use by and at the expense of the said party of the first part; and the said party of the second part covenants to deliver up said premises to the party of the first part at the determination of this lease, or at the end of any renewal of the term thereof, in good order and condition, reasonable wear and use thereof and injury by unavoidable fire or other casualty excepted.

And it is further stipulated that the party of the second part may, at or before the delivery of the premises aforesaid, remove such additions to or improvements of the same placed on the premises by the party of the second part, the renewal of which, as aforesaid, will not injure the premises, as he, the said party of the second part, may elect so to do.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

A. C. BRADLEY. [SEAL.]
JNO. A. J. CRESWELL. [DEPARTMENTAL SEAL.]
Postmaster-General.

Signed, sealed, and delivered in the presence of—
T. A. SPENCE,
A. G. MILLS.

LAW-OFFICE OF ANDREW C. BRADLEY,
No. 635 F STREET, P. O. BOX 335,
Washington, D. C., Nov. 21, 1874.

HON. POSTMASTER-GENERAL:

SIR: Alexander R. Shepherd, esq., of this city, has purchased of me the property known as No. 915 E street, Washington, D. C., leased by the Post-Office Department, and I, in consideration thereof, hereby
22 assign and transfer unto him the lease thereof, and fully authorize and empower him to collect the rent therefor.

Witness my hand and seal this twenty-first day of November, A. D. 1874.

A. C. BRADLEY. [SEAL.]

Witness:
EWELL A. DICK.

EXHIBIT F.

This indenture made this ninth day of June, in the year one thousand eight hundred and seventy-three, between Andrew C. Bradley and Sue H. Bradley, his wife, of the city of Washington, District of Columbia, of the first part, and John W. Alvord and George W. Stickney, of the same place, of the second part.

Whereas the said Andrew C. Bradley stands justly indebted unto the Freedman's Savings and Trust Company in the sum of seventeen thousand dollars, for which amount he hath passed unto the said Freedman's Savings and Trust Company his five promissory notes, bearing even date with the presents, for sums of twenty-four hundred dollars ($2,400), twenty-six hundred and fifty dollars ($2,650), twenty-nine hundred dollars ($2,900), thirty-one hundred and fifty dollars ($3,150), and fifty-nine hundred dollars ($5,900), respectively, and payable respectively in one, two, three, four, and five years after date, with interest at eight (8) per centum per annum, payable semi-annually; and being desirous to secure the punctual of said notes when and as the same shall respectively

become due and payable, with all interest and costs due and accruing thereon, the said parties of the first part therefore execute these presents.

Now, therefore, this indenture witnesseth, that said parties of the first part, for and in consideration of the premises and the sum of one dollar in lawful money of the United States to them in hand paid by the said parties of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the parties of the second part and the survivors of them, his heirs and assigns, the following-described real estate, situated in
23 the city of Washington, District of Columbia, to wit:

All that certain piece or parcel of land known and described as part of lot numbered four (4), in square numbered three hundred and seventy-seven (377), beginning for the same at the southwest corner of said lot, and running thence on the line of E street east twenty-four (24) feet; thence north one hundred and fifty-nine (159) feet to an alley; thence west twenty-four (24) feet, and thence south one hundred and fifty-nine (159) feet to the place of beginning; together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever, either at law or in equity, of the said parties of the first part, of, in, and to the said piece or parcel of land and premises:

To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto and to the use of the said parties of the second part, the survivors of them, his heirs and assigns; in and upon the trusts nevertheless hereinafter mentioned, and none other, that is to say, in trust to permit the said parties, Andrew C. Bradley, his heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for their sole use and benefit until default be made in the payment of said notes or any of them, or any instalment of interest due thereon, or any proper cost, charges, commission, half commission, or expense in and about the same, and upon the full payment of all of said notes and the interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Andrew C. Bradley, his heirs or assigns, at his or their costs; and upon this further trust, that upon default being made in the payment of the said notes, or any of them, or any instalment of interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same, there and at any time thereafter to sell the said piece or parcel of land and premises at public auction, in front of the premises, after at least twenty days' notice of the time, place, and terms of sale by advertisement in some one or more of the newspapers printed and published in the said city of Washington; which said terms of sale shall be as follows, viz, the amount of indebtedness secured by
24 this deed of trust, with expense of sale, in cash, and the balance at six and twelve months, for which the notes of the purchaser, bearing interest from the day of sale and secured by a deed of trust on the property sold, shall be taken; a deposit of two hundred dollars shall be required of the purchaser at the time of sale, and all conveyancing and revenue stamps shall be at the expense of the purchaser; and upon this further trust, upon full compliance with the terms of sale, to

convey the property in fee simple to the purchaser or purchasers thereof, at his, her, or their cost and expense, and without any liability to see to the application of the purchase-money, and out of the proceeds of said sale or sales first to pay all proper costs, charges, and expenses, and to retain as compensation a commission of three per cent. on the amount of said sale or sales; secondly, to pay whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not; and last, to pay the remainder, if any, to the said Andrew C. Bradley, his heirs or assigns.

And the said Andrew C. Bradley doth hereby covenant with the said parties of the second part, the survivor of them, his heirs and assigns, that all taxes upon the said land shall be duly paid, and that the building on said parcel of land shall be kept insured during the continuance of this trust in some good and responsible fire-insurance company or companies, to the satisfaction of the parties of the second part, in the sum of twelve thousand dollars, for the benefit of the debt hereinbefore described, and the policy or policies of insurance be assigned to the said parties of the second part, as trustee under these presents; and further, that in case the said Andrew C. Bradley, his heirs or assigns, shall fail to pay the taxes or to keep said property so insured, then the taxes may be paid and the property be insured for the amount aforesaid by the legal holder of the notes before mentioned, and the amount of taxes and premium paid shall be considered a part of the expense of said notes secured hereby, in default of payment of which the said parties of the second part, or the survivor of them, shall have power to sell said property hereby conveyed as aforesaid, and shall dispose of the proceeds of sale as hereinbefore provided.

And it is further agreed that if the property shall be advertised for sale under the provisions of the deed and not sold, then the said trustee shall be entitled to one half commissions above provided to be computed on the amount of the debt hereby secured and at such time remaining unpaid.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first above written.

A. C. BRADLEY. [SEAL.]
SUE H. BRADLEY. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM FITCH.

DISTRICT OF COLUMBIA,
County of Washington, ss :

I, William Fitch, a notary public in and for the county aforesaid, do hereby certify that Andrew C. Bradley and Sue H. Bradley, his wife, parties to a certain deed bearing date on the ninth day of June, A. D. 1873, and hereto annexed, personally appeared before me, in the county aforesaid, the said Andrew C. Bradley and Sue H. Bradley being personally known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Sue H. Bradley being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same and that she wished not to retract it.

Given under my hand and notarial seal this ninth day of June, A. D. 1873.

[SEAL] WILLIAM FITCH,
Notary Public.

EXHIBIT G.

This indenture made the sixteenth day of June, in the year eighteen hundred and seventy-three, between the Freedman's Savings and Trust Company, a corporation duly incorporated by act of Congress, approved March 3, 1865, of the first part, and Andrew C. Bradley of the city of Washington, District of Columbia, of the second part, witnesseth:

That whereas at a meeting of the board of trustees of said corporation, party of the first part, held in the city of Washington, District of Columbia, on Thursday, the twelfth day of June, A. D. 1873, the
26 said board accepted the offer of the said party of the second part to purchase the piece or parcel of land and premises hereinafter described, at and for the sum of eighteen thousand and five hundred dollars and authorized and directed its president to execute a deed thereof to said party of the second part as is testified by the signature of the secretary of said board hereto annexed. Now, this indenture witnesseth, that the said party of the first part, for and in consideration of the sum of eighteen*th* thousand and five hundred dollars ($18,500), to it paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, transferred, conveyed, and confirmed, and doth by these presents grant, bargain, and sell, transfer, convey, and confirm unto the said party of the second part, his heirs and assigns, all that certain piece or parcel of land situate and lying in the city of Washington, aforesaid, known and described as part of lot number four (4), in square numbered three hundred and seventy-seven (377), beginning for the same at the southwest corner of said lot and running thence on the line of E street twenty-four (24) feet; thence north one hundred and fifty-nine (159) feet to an alley; thence west twenty-four (24) feet; and thence south one hundred and fifty-nine (159) feet to the place of beginning; together with all of the improvements, ways, easements, and appurtenances thereto belonging or in anywise appertaining, to have and to hold the said piece or parcel of land and premises, together with the appurtenances, to, unto and to the use of the said party of the second part, his heirs and assigns forever.

In testimony whereof the president of the said corporation, party of the first part, hath hereunto signed, named, and affixed the corporate seal, the day and year first hereinbefore written.

JOHN W. ALVORD.
Pres't F. S. & T. Co.

[CORPORATE SEAL.]

G. W. STICKNEY,
Actuary and Secretary.

Signed, sealed, and delivered in the pre*re*sence of—
N. CALLAN.

DISTRICT OF COLUMBIA,
County of Washington, ss:

27 I, Nich. Callan, a notary public in and for the said county and District, do hereby certify that J. W. Alvord, to me known to be president of the board of trustees of the Freedman's Savings and Trust Co., party to a certain deed hereto annexed, bearing date on the sixteenth day of June, in the year eighteen hundred and seventy-three, and acknowledged said deed to be the act and deed of the Freedman's Savings and Trust Company for the purposes therein expressed.

Given under my hand and notarial seal this sixteenth day of June, A. D. 1873.

N. CALLAN,
Notary Public.

EXHIBIT H.

This indenture made this twenty-seventh day of August, in the year eighteen hundred and seventy-four, between Andrew C. Bradley and Sue H. Y. Bradley, his wife, of the first part, and Alexander R. Shepherd of the second part, all of the city of Washington, District of Columbia, witnesseth:

That the said parties of the first part, for and in consideration of the sum of eighteen thousand dollars to them paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, and sold, assigned, transferred, conveyed, and confirmed, and do hereby grant, bargain, and sell, assign, transfer, convey, and confirm unto the said party of the second part, his heirs and assigns, all that certain piece or parcel of land situate and lying in the said city of Washington, known and described as part of lot numbered four (4), in square numbered three hundred and seven-seven (377), beginning for the same at the southwest corner of said lot and running thence on the line of E street, east, twenty-four (24) feet; thence north one hundred and fifty-nine (159) feet to an alley; thence west twenty-four (24) feet; thence south one hundred and fifty-nine (159) feet to the place of beginning; together with all and singular the improvements and appurtenances to the same belonging or in anywise appertaining, and all the right, title, interest, and estate of the said parties of the first part in and to the same. To have and to hold the said piece or parcel of land and
28 premises to, unto and to the use of the said party of the second part, his heirs and assigns forever.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

A. C. BRADLEY. [SEAL.]
SUE H. Y. BRADLEY. [SEAL.]

Signed, sealed, and delivered in the presence of—
D. R. BELL.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, D. R. Bell, a notary public in and for said District and county, do hereby certify that Andrew C. Bradley and Sue H. Y. Bradley, parties to the deed above written, bearing date the twenty-seventh day of August, in the year eighteen hundred and seventy-four, and to me well known as such, and acknowledged the same respectively to be their act and deed, and the said Sue Y. Bradley being by me examined apart from her husband acknowledged the same to be her act and deed and declared that she executed the same willingly, and wished not to retract it.

Given under my hand and notarial seal this eleventh day of September, A. D. 1874.

[SEAL.]

D. R. BELL,
Notary Public.

Summons to answer & restraining order.

In the supreme court of the District of Columbia, April 5th, 1875.

EDWARD CLARK ET AL., COMPLAINANTS,
against
COMMISSIONERS FREEDMAN'S SAVINGS & Trust Co. et al., defendant.
No. 4260. Equity docket 14.

The President of the United States to John A. J. Creswell, Robert Purvis, Robert H. T. Leipold, Com's F. S. & T. Co., Frances W. Eaton, Paul Eaton, & Isabella Eaton, Andrew C. Bradley, and Alexander R. Shepherd, and Marshal Jewell, Postmaster-General, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS,
Ass't Clerk.

Restraining order.

An original bill praying an injunction to restrain defendant Shepherd from conveying or disposing of said premises, and def'ts, the commissioners, from disposing of the notes in said bill mentioned and described, is this day filed. Hearing is fixed for the 16th day of April, 1875, at 11 o'clock a. m. Until further order, you are hereby restrained as prayed.

By order of the court.

A. WYLIE,
Justice, &c.

In the supreme court of the District of Columbia.

EDWARD CLARK ET AL.
vs.
THE FREEDMAN'S SAVINGS & TRUST COMpany, John A. J. Creswell, et al.
No. 4260. Equity.

Joint answer of defendants, the commissioners of the F. S. and T. Company.

The joint and several answers of John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's
29 Savings and Trust Company, to the bill of complaint of Edward Clark, trustee, and Louisa McGhan.

The said defendants for answer say:

First. They admit the allegations contained in the first and second paragraphs of said bill.

Second. They deny that said Francis McGhan was the owner in fee simple of the real estate mentioned in the third paragraph of said bill at the time therein stated, but say, that he never owned more than a leasehold estate in said property. They admit that he conveyed such estate as he had, in trust for the use and benefit of said Louisa McGahn, as in said paragraph set forth.

Third. They admit that the allegations in the fourth paragraph of said bill are true, and also those in the fifth paragraph of said bill.

Fourth. In answer to the charges and allegations contained in the sixth paragraph of said bill these defendants say upon information and belief, not having any personal knowledge of the said matters and things, that said sale was fairly made by said Eaton, under and by virtue of the powers to him in the said deed of trust, and that as many as twenty persons were present at such sale, amongst whom were three or four bidders; it is not true that said property was purchased or bidden upon by the said Daniel L. Eaton, but the same was purchased and bid off by George W. Stickney for the said Freedman's Savings and Trust Company. That said Stickney bid for said property the sum of *of* $13,000.00, which was a fair price for said property and all the same was then reasonably worth. They do not know whether or not said McGhan was dissipated in habits, and whether or not said Louisa McGhan was confined to her bed and unable to attend to her business, but they are advised by counsel and verily believe that it is immaterial whether said allegations are true or not.

30 Fifth. They further say in answer to the allegations contained in the said sixth paragraph of said bill, that they are advised that said deed from said Eaton mentioned in said paragraph, is good and effectual both in law and equity to pass the title to said property, and that said complainants cannot avail themselves of any defects in said deed even if defects exist therein, because they are not in any way injuriously affected by such defects, and they claim the same benefit by this answer as if they had specially demurred to said bill.

Sixth. They have no personal knowledge of the matters and things set forth in the seventh paragraph of the said bill, except that they hold the notes of the said Bradley as therein set forth.

Seventh. In answering the allegations of the eighth paragraph of said bill, these defendants say they do not know whether or not any account of said sale was ever rendered to said plaintiff, or to said Francis McGhan, but they are ready and willing to state an account touching the said sale, and also to deliver up said note should the court so direct. They are advised and believe, and therefore aver, that they are not bound to render any account of rents and profits of said premises.

Eighth. In answer to the averments made in the ninth paragraph of said bill, these defendants say, that they have no personal knowledge and cannot state as to whether or not the rents will fall due as alleged in said paragraph, but they have no reason to doubt the truth of such allegation.

Ninth. Further answering the said bill, these defendants say on information and belief, that the said premises were fairly sold by said Eaton, and that they were not reasonably worth at the time of the said sale more than $13,000.00 and that they were in a very dilapidated

31 condition, the dwelling-house being in such a bad state of repair as to be unfit for occupation. That the said Freedman's Savings and Trust Company expended in and about said premises and for repairs on the house about the sum of $2,200. They also purchased from one Looney, who was the owner of the fee simple title to said property, his estate therein. That at the time of the sale by the said Trust Company of the said property to said Bradley, the same had cost said company over $18,000, including a moderate interest on the money invested. A statement of the items of cost of said premises to said Trust Company, as the same appear upon the records and books of account of said com-

pany, is hereto attached, marked Exhibit A, and referred to as a part of this answer.

Tenth. Further answering, these defendants say, that heretofore, and about the 11th of September, 1872, the said Freedman's Savings and Trust Company brought an action of ejectment against the plaintiffs and said Francis McGhan, being cause No. 10023 at law in this court, wherein judgment was rendered in favor of said Trust Company, and these defendants submit that said judgment is final and conclusive as to the matters and things alleged in said bill.

JOHN A. J. CRESWELL.
ROBERT PURVIS.
R. H. T. LEIPOLD.

ENOCH TOTTEN,
R. H. T. LEIPOLD,
Solicitors for Defendants.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, R. H. T. Leipold, being duly sworn, do depose and say, that I am one of the defendants who make the foregoing answer, and that I know the contents thereof, and that the facts in said answer stated on information and belief I believe to be true, and that those stated on personal knowledge I know to be true.

R. H. T. LEIPOLD.

Subscribed and sworn to before me this twenty-eighth day of April, 1875.

[SEAL.] D. RITTENHOUSE,
Notary Public.

EXHIBIT A.

Statement of McGhan.

Note			$10,000 00
Interest to date of sale from June 20, 1871, less $100 paid			1,927 77
1871.			
Dec. 23.	Insurance premium		19 50
1872.			
July 8.	Advertising and auctioneer's expenses		736 75
" 17.	Trustee's commissioners		650 00
Dec. 4.	Taxes		1,216 50
" 9.	Marshal's fees		6 00
" 10.	Repairs of property		3 00
" 20.	Ground rents		229 80
" 21.	Justice's fees		14 40
" 28.	Insurance premium		22 50
" 31.	Constable's fees		3 50
1873.			
Feb'y 4.	Stamp and recording		14 75
March 1.	Repairs		2,200 00
" 8.	Add. ins. pr		2 00
April 11.	Special improvement taxes		151 13
	Amount paid Looney for fee		800 00
			$17,997 60

And interest from July 1, 1872, to date of sale to A. C. Bradley.

33 *Answer of defendant Alexander R. Shepherd.*

In the supreme court of the District of Columbia. In equity.

EDWARD CLARK, TRUSTEE, AND LOUISA McGhan, plaintiffs,
vs.
FRANCIS W. EATON, WIDOW OF DANIEL L. Eaton, decease; dPaul Eaton & Isabella Eaton, minor children; John A. J. Creswell, Robert Purvis, Robert H. T Leipold, commissioners of Freedman's Savings and Trust Company; the Freedman's Savings and Trust Company, Andrew C. Bradley, Alexander R. Shepherd, Marshall Jewell, Postmaster-General, defendants.

No. 4260, doc. 14.

The separate answer of Alexander R. Shepherd, one of the defendants to the bill of complaint of the above-named plaintiffs.

This defendant, now and at all times hereafter reserving all manner of benefit and advantage to himself of exception to the manifold errors in said bill contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answering saith:

1. On information and belief he admits that the plaintiffs are residents of the city of Washington and District of Columbia.

2. On information and belief he admits that Francis W. Eaton is the widow of Daniel L. Eaton, deceased, and that Paul and Isabella
34 Eaton are minor children and heirs at law of said Daniel L. Eaton, deceased, and that John A. J. Creswell, Robert Purvis and Robert H. T. Liepold are commissioners of the Freedman's Savings and Trust Company, under an act of Congress approved June 1874, and that the Freedman's Savings and Trust Company is a body corporate by virtue of an act of Congress approved March 1st, 1865, having its principal place of business in the city of Washington, and that Andrew C. Bradley and this defendant are residents of said city of Washington, and that Marshall Jewell is Postmaster-General of the United States.

3. On information and belief he admits that on the 15th day of August, 1864, Francis McGhan and Louisa McGhan conveyed to Edward Clark part of lot No. 4 in square No. 377 in the city of Washington, in trust for the use and benefit of said Louisa during her lifetime, and for other purposes specified in said deed, and that a correct copy of said deed is attached to the bill of complaint, marked Exhibit A, and that said deed empowered the trustee to convey the premises mentioned in it, or any part thereof, absolutely in fee simple, or in trust by way of mortgage, to such person or persons, and to such use and purposes as the said Louisa might in writing request or direct; but on information and belief derived from the records of deeds recorded among the land records of the city of Washington and District of Columbia as well as otherwise, he denies that on the 15th day of August, 1864, the said Francis McGhan was the owner in fee simple of the property described in said deed, and he avers the facts to be as follows:

On the 31st day of July, 1816, John P. Van Ness was the owner in fee simple of said property, and, being such owner, on said day made and executed to Joseph Gales, for the term of ninety-nine years, a lease
35 of the whole of lot 4 at an annual rental of $122.00 and the payment

of taxes, with the right to purchase, as will more fully appear by reference to a copy of said lease, the original of which is duly recorded among the land records of said District in liber A. M. 37, folio 388, which said copy is hereto attached and marked Exhibit No. 1, and prayed to be considered as part of this answer.

The western part of this lot as leased to the said Gales was conveyed to said Francis McGahn, and it was this interest only which he held and did or could convey to Edward Clark, trustee, and which was sold by said Daniel L. Eaton as trustee; the advertisement made by him distinctly setting forth that the property was subject to a certain ground-rent, which will more fully appear by a copy of the advertisement of said sale, a copy of which is hereto attached, marked Exhibit No. 2, and prayed to be considered a part of this answer.

No purchase of the fee in said part of said lot was made by said Francis McGhan during his lifetime, nor by any person under whom he claimed a right to said property, and the same finally passed to and became vested in Ann McIves Van Ness, wife of Henry D. Loney, who, with her said husband, on the seventh day of June, 1873, conveyed the same to defendant Andrew C. Bradley, as will more fully appear by reference to said deed duly recorded among the land records of said District of Columbia in liber No. 722, folio 250, and to a copy thereof hereto annexed and marked Exhibit No. 3, and prayed to be considered as part of this answer.

4. On information and belief he admits that said Francis McGhan became indebted to the said Freedman's Saving and Trust Company on the 20th day of June, 1870, in the sum of $10,000 for money borrowed from said company, for which the said Francis and Louisa gave their
36 promissory note, payable one year after date, with ten per cent. interest, payable semi-annually, and to secure the payment thereof the said Louisa and Francis McGhan, and Edward Clark, as trustee for the said Louisa, on the 20th day of June, 1870, executed and delivered a deed of trust to Daniel L. Eaton, at the time the actuary and secretary of the Freedman's Savings and Trust Company; but said deed was not made to him as such officer or employee of said company, but to him individually, and in his individual capacity he was created by said deed a trustee, and authorized and empowered to sell said property in the event of a failure to pay said indebtedness as set forth in said deed, as will more fully appear by reference to copy thereof attached to complainant's bill as Exhibit B. On information and belief he admits that said Francis McGhan died on or about the 27th day of October, 1874, and said Eaton on the 16th day of February, 1873.

5. On information and belief he admits that on the 5th day of April, 1872, the note given to the Freedman's Savings and Trust Company was due and unpaid, and that $1,400 of interest had accrued thereon, which also was unpaid, and that a notice of sale was accordingly published in the National Republican, a daily newspaper published in the city of Washington, which was followed by notices of postponements until the 1st day of July, 1872, as will more fully appear by reference to Exhibit No. 2 hereto attached, and also to complainant's Exhibit C.

6. On information and belief he denies that on the first day of July, 1872, the said Daniel L. Eaton pretended to sell said property agreeably to the notices of sale and the last postponement thereof, as set forth in Exhibit No. 2 of this answer and Exhibit C of complainant's bill, and it is also denied that the said Eaton was the principal manager of said company on said day, and he avers that the said sale was not
37 pretended but real, and not made by said Eaton either as actuary

or secretary of said company or as its principal manager, but solely in his capacity as trustee, and as constituted such by complainants and by said Francis McGhan, deceased.

And he further denies on information and belief that at the time of said sale not to exceed eight persons in number, including the trustee, auctioneer, and crier of said sale, were present, and that no bid was made for said property except a bid therefor of the sum of $13,000 by the said Daniel L. Eaton, and that said property was pretended to be sold upon such bid, and that on account thereof the said Eaton executed to the said Freedman's Saving and Trust Company an instrument in writing not under seal, and the acknowledgment to which is without date and wholly defective. And he avers that the said sale was well attended and that about twenty persons were present, and that several bids were made for the property, and that no bid was made by the said Eaton on said day, but that the said bid on which said property was sold to said company was made by George W. Stickney, as will more fully appear by Exhibits 4 and 5, hereto annexed as parts hereof, being the affidavits respectively of John W. Smith and Edwin J. Sweet. And he denies on information and belief as well as personally, that said property was offered for sale at a time when a very large proportion of those persons who are able to purchase were absent from the city. And he avers that of the number of persons attending said sale there were several responsible business men who were well able to purchase said property. And he denies that it was well known to said Eaton that at the time of said sale, and continuously up to the time of his death, said McGhan was dissipated in his habits and neglectful of his business. On information and belief he admits that the said deed from said Eaton to said company is not under seal, and that the acknowledg-
38 ment thereto is without date; and he avers that such facts were unknown to him at the time of the sale and conveyance by said company to said defendant Bradley, and were also unknown to said defendant Bradley; that the omission of the seal, and of the date to the acknowledgment to said deed, could not be taken advantage of by the complainants as they attempt to do, were such seal and date necessary, and that the said deed or instrument of writing is valid and sufficient to pass the estate and interest vested in said trustee, both at law and in equity.

7. On information and belief he admits that on the 6th day of June, 1873, defendant Bradley executed a lease of said premises to the United States for the use of the Post Office Department for a period of three years, with the privilege of renewal for the period of two years, for the rental of $4,200 per annum, and that on the 9th day of June, 1873, the said defendant Bradley executed a deed of trust thereof to John W. Alvord and George W. Stickney, to secure to the Freedman's Saving and Trust Company the sum of $17,000 with interest at the rate of 8 per cent. per annum; $2,400 payable in one year (June 9th, 1874), $2,650 in two years (June 9th, 1875), $2,900 in three years (June 9th, 1876), $3,150 in four years (June 9th, 1877), and $3,900 in five years (June 9th, 1878), He denies that on the 16th day of June, 1873, the said Freedman's Saving and Trust Company executed and delivered a quitclaim deed for land and premises to said defendant Bradley, for the expressed consideration of $18,500, and he avers that instead of being a quitclaim deed, it is a regular deed of bargain and sale, as will appear by reference to Exhibit G, made part of complainant's bill, and that the said consideration instead of being merely express or nominal was actual and bona fide.

39 He denies that on the 27th day of August, 1874, the said defendant Bradley and wife executed a quitclaim deed to this defendant for an expressed consideration of $18,000 of said property, and that he avers on his personal knowledge that an actual consideration passed between him and said Bradley, and that the conveyance made by said Bradley, as appears from the copy thereof attached to complainants' bill marked Exhibit H, is a deed of bargain and sale. And he further avers that he paid to said Bradley part of the consideration in money and the balance by agreeing with said Bradley to pay the notes given by said Bradley to said company.

He denies that he assumed, so far as said company is concerned, the payment of the said notes executed by the said Bradley as aforesaid, and he avers as heretofore that his assumption was with the said Bradley only. He denies that the notes of said Bradley remain unpaid with the exception of said sum of $2,400, and he avers that in addition thereto, the said sum of $ has been paid in semi-annual instalments as interest upon the debt unpaid, and as the same accrued. And he avers that all of said indebtedness has been paid so far as the same has become due, and it is his intention to pay the various notes as they shall mature, with the accruing interest thereon. He denies that no other consideration was paid or promised to be paid to said company by him, or by said defendant Bradley, than the amount specified in the notes, executed by said Bradley, and he avers that in addition thereto, at the execution and delivery of said deed by said company to said Bradley, the sum of $1,500 cash was paid to said company, making the aggregate of purchase money, with the amount of said notes, $18,500. He admits on information and belief that on the 30th of June, 1874, the sum of $4,480.86 was received by the said Bradley from the United States as rent, and that on the 30th day of September, 1874, the
40 sum of $1,050 was also received by him; and on the 31st day of December, 1874, the sum of $1,050 was received by this defendant; and that on the 31st day of March, 1875, the sum of $1,050 was also received by him as rent as aforesaid, making an aggregate of $7,630.86, and that a like sum will become due every three months during the continuance of said lease; but he avers that the Congress of the United States at its late session only appropriated the sum of $1,800 with the proviso that said "sum shall not be deemed to be paid on account of any lease for years of said building," as will more fully appear by a copy of act approved March 3, 1875, hereto attached and marked Exhibit No. 5, and prayed to be considered as part of this answer. And he avers that said lease was in all respects fair and honest, and a copy thereof, together with a transfer thereof to him from said Bradley, appears as complainant's Exhibits E, filed with and attached to their bill, and he avers that by virtue of such assignment he is justly entitled to receive the rents which the United States promised and engaged to pay for the said property, and that neither the complainants nor any other person are entitled to the same nor any part thereof.

8. He does not know and therefore can neither admit or deny that the Freedman's Savings and Trust Company, or any one on account of said company, has never rendered an account of said sale to said plaintiffs, or said Francis McGhan, or that said company has never surrendered said note; he admits that neither he nor defendant Bradley have accounted to the plaintiffs for the rents and profits of said property received by them, and avers that no circumstances attending their title or possession, or their acquisition of said property, render them in any wise accountable to said plaintiffs for such rents and profits.

41 9. He admits that Marshall Jewell is Postmaster-General, and that under the terms of the lease the sum of $1,050 rent will become due and payable on the 30th day of June, 1875, and that thereafter other rents will become due and payable thereunder.

10. On information and belief he avers that said sale was fairly made by said Eaton, trustee, after very full and free advertisements thereof and postponement on the account and at the request of the said Louisa McGhan, in the presence of a fair and unusual number of persons for such sale, and that $13,000, the amount for which sale was made, was, under the circumstances thereof, the condition of the property, and the nature of the estate sold, as much as said property was worth. That at the time of such sale the debt and interest secured, together with the commissions and expenses of the sale, and the unpaid taxes, aggregated over the sum of $14,000, and at the time of the sale by said Freedman's Savings and Trust Company to defendant Bradley the said indebtedness, interest, taxes, and other necessary expenditures in and about said property aggregated over the sum of $18,500. But this defendant says that his purchase of said property was bona fide; that he had no notice of any irregularities or improprieties in said trustee's sale, if any there were, which he denies; that the said purchase by said Bradley was made nearly one year subsequent to said trustee's sale; that no notice, actual or constructive, of any equities existing or supposed to exist in these plaintiffs had been given to or received by said Bradley or this defendant, and that in cause No. 10,023, on the law side of this court, in which said Freedman's Savings and Trust Company was plaintiff and these plaintiffs and said Francis McGhan, deceased, were defendants, a judgment in ejectment for said property was rendered November 7th,
42 1872, and a writ of habere facias possessionem was issued thereupon, and possession delivered by the U. S. marshal, November 25th, 1872, and that said judgment is final and conclusive as to the matters and things alleged in said bill.

This defendant, further answering, says that while the purchase from the Freedman's Savings and Trust Company was made by defendant Bradley it was designed for this defendant, and that accordingly this defendant assumed, with said Bradley, to pay the obligations for said purchase-money which he had given to said company, and that said Bradley accordingly conveyed said property to this defendant, and a few months thereafter ceased to act as the (attorney) for this defendant in the matter; that he was led to make the purchase in part because one B. H. Warner, a real-estate agent in said District, informed him that he had negotiated with said company for the purchase of the same, as well as a lease thereof to the Post-Office Department, in his (Warner's) own behalf, and because said Warner offered and desired him to take his place in the transaction, and that chiefly because he believed it would be a profitable investment of funds in consequence of the lease to the Post-Office Department, he accepted the offer of said Warner, and requested said defendant Bradley, as his attorney, to take charge of the matter, have the property conveyed directly to him, and execute all necessary papers, which said Bradley in good faith did, including the execution of the lease with the Post-Office Department.

And he further avers that according to the arrangement made with said Bradley he gave his check for $1,500 cash payment on said sale; that he has since paid the note that has matured and the accrued interest; that said Bradley has turned over to this defendant the rents collected by him, and he further avers, that in the purchase of said
43 property he acted in all respects in good faith, and without any

fraud or wrongdoing, as he had a full right to do in law and equity, and as a citizen of the United States, and that both as respects individuals and the Government of the United States his conduct has been in all particulars proper and correct.

And this defendant denies all and every matter and thing in said bill contained not hereinbefore specially denied or admitted, in any way affecting his rights, and he submits, so far as he is concerned, said bill contains no sufficient averments or allegations of facts by which the case can be properly presented to the attention of this court, and that it is entirely without any adequate grounds of equity, and he prays that he may have the same advantages of said defence as if he had demurred to said bill for want of equity. And having fully answered, he prays that he may be hence dismissed with his reasonable costs, in this behalf most unjustly sustained.

ALEX. R. SHEPHERD.

W. A. COOK,
A. C. BRADLEY,
Solicitors.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Alexander R. Shepherd, being duly sworn, deposes and says that he has read the answer by him subscribed, and knows the contents thereof, and that the facts therein stated of his own knowledge are true, and those stated on information of others he believes to be true.

Subscribed and sworn to before me this 24th day of May, 1875.

[SEAL.] D. R. BELL,
Notary Public.

44 EXHIBIT No. 1.

John P. Van Ness to Joseph Gales, jr. Recorded 26th November, 1816. Liber N. M., No. 38, folio 388.

This indenture, made this thirty-first day of July, in the year of our Lord one thousand eight hundred and sixteen, between John P. Van Ness and Maria Van Ness, his wife, of the city of Washington, of the one part, and Joseph Gales, jr., of the same place, of the other part, witnesseth:

That the said John and Marcia, for and in consideration of the payment of the rent and performance of the covenants hereinafter mentioned on the part of the said Joseph, his executors, administrators, and assigns, to be paid and performed, have demised, leased, and to farm letten, and by these presents do demise, lease, and to farm let unto the said Joseph, his executors, administrators, and assigns, all that certain lot or portion of ground in the said city of Washington, distinguished on the plat of the said city as lot numbered four, in square numbered three hundred and seventy-seven, fronting on E street north, at the annual rent of one hundred and twenty-two dollars:

To have and to hold the said lot of ground and premises, together with all ways, privileges, easements, emoluments, advantages, and appurtenances to the said lot belonging or in any wise appertaining, unto the said Joseph, his executors, administrators, and assigns, from the first day of November last, for and during and until the full end and term of ninety-nine years from thence next ensuing and fully to be complete and ended, yielding and paying therefor unto the said John and Macria, their heirs and assigns, the said yearly rent of one hundred and twenty-two dollars, together with all taxes, assessments, or public dues that now are or hereafter may be laid, taxed, or assessed on the said demised

premises, which said one hundred and twenty-two dollars are to be paid in two equal half-yearly payments from and after the first day of January next; that is, on the first day of July and on the first day of January in each and every year, during the continuance of this lease, the sum of sixty-one dollars to be paid; provided always, that if it shall happen that the said rent or any part thereof shall be in arrear and unpaid for the space of sixty days next after the time at which the same is reserved to be paid as above, being first lawfully demanded, that then it shall
45 and may be lawful to and for the said John and Marcia, or either of them, their heirs and assigns, into the demised premises or any part thereof in the name of the whole to re-enter and the same to have again, repossess, occupy, and enjoy as in his or their former estate until all such arrearages of rent with legal interest therefor and all and every cost, charge, and expense incurred by reason of the non-payment of the said rent shall be fully satisfied and paid or make distress therefor at his or their option.

And the said Joseph Gales, jr., for himself, his heirs, executors, administrators, and assigns, doth covenant, grant, and agree to and with the said John P. Van Ness, his heirs and assigns, that he, the said Joseph, his executors, administrators, or assigns, shall and will well and truly pay or cause to be paid unto the said John, his heirs and assigns, the above-reserved rent at the times above limited for payment of the same, and shall and will pay all taxes, charges, and impositions accruing or to grow due on said lot unto the proper officer authorized to collect the same; and the said John, for himself, his heirs, executors, administrators, and assigns, doth covenant, promise, and agree to and with the said Joseph, his heirs, executors, administrators, and assigns, in manner following, that is to say, that he, the said Joseph, his heirs, executors, administrators, or assigns, may at any time purchase the said lot of ground for such sum of money as the contents of said lot, together with the alley-portion allotted or assigned thereto, would amount to at the rate of twenty cents per superficial square foot for the whole, together with all rents, public dues, and taxes that may then be due, if any, on the said lot; and upon payment of the said sum of money, together with all rents, public dues, and taxes that may then be due, if any, on the said lot, the said John shall, within a reasonable time thereafter, have a good and sufficient deed in fee simple, made and executed by himself and his said wife, of all their estate, right, title, and interest in the said lot of ground and premises to said Joseph Gales, jr., his heirs and assigns forever.

And in case the said Joseph, his heirs, executors, administrators, or assigns shall not purchase the said lot of ground within the said term of ninety years from the said first day of November last, then and in such case the said John and Marcia, their heirs or assigns, shall and will, at the expiration of the said term, make and execute a new
46 lease of the premises hereby demised unto the said Joseph, his executors, administrators, or assigns, for another term of ninety-nine years, subject to the rents, covenants, provisoes, and agreements aforesaid, and so on, renewable forever.

In witness whereof the said parties have hereunto subscribed their hands and seals the day and year first above written.

JOHN P. VAN NESS. [SEAL.]
MARCIA VAN NESS. [SEAL.]
JOSEPH GALES, JR. [SEAL.]

Sealed and delivered in presence of—
JAMES H. BLAKE.
JAMES M. VARNUM.

DISTRICT OF COLUMBIA,
County of Washington, sct:

On this 31st day of July, 1816, before us, the subscribers, two justices of the peace in and for the said county, personally appeared John P. Van Ness and Marcia Van Vess, the parties lessors, and Joseph Gales, jr., the party lessee, named in the preceding and annexed indenture of lease, and severally acknowledged the said indenture to be their respective act and deed, according to the true intent and meaning thereof.

Taken and certified the day and year above written.

JAMES M. VARNUM.
JAMES H. BLAKE.

EXHIBIT No. 3.

Henry D. Loney et ux. to Andrew C. Bradley. Deed. Recorded June 17th, 1873. Liber 722, folio 250.

This indenture made this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-three, between Henry D. Loney and his wife, Anna M. Loney, formerly Anna Van Ness, resident of Baltimore, Maryland, of the first part, and Andrew C. Bradley, of Washington City, D. C., of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of eight hundred dollars to them in hand paid by the said parties of the second part at and before the sealing and delivery of these
47 presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, release', and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto said parties of the second part, his heirs and assigns forever, the following described real estate, situate in the city of Washington, District of Columbia, and known as part of lot numbered four (4), in square numbered three hundred and seventy-seven (377), of the authentic ground plan or plat of said city, commencing for the said part of lot on the southwest corner of said lot on E street north and running thence north one hundred and fifty-nine (159) feet to the alley in the rear of said lot; thence east with the line of said alley, twenty-four (24) feet; thence south one hundred and fifty-nine (159) feet, to said E street north, and thence west with the line of E street to the place of beginning (24 feet);

Together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging, or in any wise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, and claim whatsoever, whether at law or in equity, of the said party of the first part, of, in, and to the said piece or parcel of land and premises:

To have and to hold the said piece or parcel of land and premises with the appurtenances unto said party of the second part, his heirs and assigns, to their sole use, benefit, and behoof forever.

And the said parties of the first part, for themselves, their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part and their heirs shall and will warrant and forever defend the said piece or parcel of land and premises with the appurtenances, unto the said party of the second part, his heirs or assigns, from and against the claims of all persons claiming—who claim the same by, from, under, or through them or any of them.

And further, that they, the said parties of the first part, and their heirs, shall and will, at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make, execute, deliver, and acknowledge all such other deed or deeds or other assurance in law for the more certain and effectual
48 conveyance of the said piece or parcel of land, premises, with the appurtenances, unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall advise, devise, or require.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

HENRY D. LONEY. [SEAL.]
ANNA M. LONEY. [SEAL.]

Signed, sealed, and delivered in presence of—
G. E. LANGSTON.
WM. D. ELDRIDGE.

STATE OF MARYLAND,
City of Baltimore, ss:

I, George E. Langston, a notary public in and for the State and city aforesaid, do hereby certify that Henry D. Loney and Anna M. Loney, his wife, parties to a certain deed, bearing date on the seventh day of June, 1873, and hereto annexed, personally appeared before me, in the city aforesaid; the said Henry D. Loney and Anna M. Loney, his wife, being personally known to me to be the persons who executed the said deed, and acknowledged the same *same* to be their act and deed.

And the said Anna M. Loney being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this eleventh day of June, A. D. 1873.

G. E. LANGSTON,
Notary Public.

49 EXHIBIT NO. 4.

In the supreme court of the District of Columbia.

EDWARD CLARK, TRUSTEE, ET AL., *vs.* FRANCIS W. EATON ET AL. } 4260. Eq. Doc. 14.

John W. Smith, being duly sworn, deposes and says that he is a member of the bar of this court, and is practicing his profession in the city of Washington. That on the 1st day of July, 1872, he attended an auction sale of the property described in the bill of complaint, known as No. 915 E street, N. W. That he went there with the intention of purchasing said property if he could do so within the price he felt justified in offering, and that in good faith he bid therefor as high as $12,300 or $12,500, he has forgotten which. That there were at said sale about twenty men, and, he believes, several bidders besides himself.

JOHN W. SMITH.

Subscribed and sworn to before me this 10th day of May, 1875.

A. C. BRADLEY,
U. S. Comm'r.

EXHIBIT No. 5.

In the supreme court of the District of Columbia.

EDWARD CLARK, TRUSTEE, ET AL., *vs.* FRANCIS W. EATON ET AL. } Equity No. 4260.

E. J. Sweet, being duly sworn, deposes and says that he is a resident of the city of Washington, District of Columbia, and engaged therein as a real estate broker and auctioneer; that he is familiar with the
50 property described in the bill of complaint filed in this cause, known more familiarly as No. 915 E street northwest, in said city.

That on the first day of July, 1872, he was employed as salesman for B. H. Warner, real estate broker and auctioneer, and as such, made sale of the land and premises with improvements thereon referred to, on that day, at public auction. That there was a very good attendance at said sale, there being as deponent believes about twenty persons present, including several well-known business men, and men of means, among whom was Robert H. Graham, whom deponent remembers.

That he received several bids for the property from different persons, one of whom he remembers was John W. Smith, an attorney-at-law, who bid up to within a few hundred dollars of $13,000, as deponent believes as high as $12,800, and the property was finally and publicly struck off to the Freedman's Savings and Trust Company, upon the bid of George W. Stickney, at $13,000.00, when it became apparent that no higher bid could be obtained.

That Daniel L. Eaton, the trustee, making the sale, did not bid upon the property, though he was present at the sale, and it was upon the bid of George W. Stickney, as before stated, that sale was made to the Freedman's Savings and Trust Company, and such was so announced, and entered upon the said auctioneer's book. That he considers the price at which the sale was made a fair one, considering the condition of the property and its need of repair, and certainly the best that could be obtained on the occasion, which had been fully and freely advertised, and was well attended.

That the said sale was postponed several times for the accommodation of Mrs. McGhan, who claimed to be sick in the house.

E. J. SWEET.

Subscribed and sworn to before me this 12th day of April, 1875.

M. M. ROHRER,
Notary Public.

51 *Answer of defendant A. C. Bradley.*

In the supreme court of the District of Columbia.

EDWARD CLARK, TRUSTEE, ET AL., *vs.* FRANCIS W. EATON ET AL. } Eq. 4260. Doc. 14.

The separate answer of Andrew C. Bradley, one of the defendants, to the bill of complaint of the above-named complainants.

This defendant, now, and at all times hereafter, reserving all manner

of benefit and advantage to himself of exception to the manifold errors, imperfections, and uncertainties in said bill contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answering saith:

1. He admits that complainants are residents of the District of Columbia.

2. He admits that Francis W. Eaton is the widow and Paul and Isabella are minor children and heirs-at-law of Daniel L. Eaton, deceased; that John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold are commissioners of the Freedman's Savings and Trust Company under an act of Congress; that the Freedman's Savings and Trust Company is a body corporate, having its principal place of business in the city of Washington, and that this defendant and Alexander R. Shepherd are residents of said District.

3. He admits that on the 15th day of August, 1864, Francis McGhan and Louisa McGhan executed a deed of conveyance to the complainant, Edward Clark, trustee, of the property described, upon the trusts alleged,

but he denies that at said date the said Francis McGhan was, or

52 at any other time has been the owner in fee simple of said property described in said deed; and he avers the fact to be that the said McGhan held and owned only the remnant of a term for ninety-nine years, created by a deed of lease dated the 31st day of July, 1816, from John P. Van Ness, then the owner in fee simple of said property, to Joseph Gales, at an annual reserved rent, with the privilege of purchasing, as will more fully appear upon reference to the record thereof in liber A. M., No. 37, folio 388, of the land records of said District, and to a copy thereof filed with the answer of defendant Shepherd, which is prayed to be considered as a part of this answer; and he further avers that the said Daniel L. Eaton, trustee, offered for sale, and sold only this leasehold interest, as appears by a copy of the advertisement of sale filed with said complainant's bill, and also with the answer of defendant Shepherd, reference to which is prayed as a part hereof; and he further avers that the fee passed to and finally became vested in Ann McIves Van Ness Loney, who with her husband, Henry D. Loney, on the seventh day of June, 1873, executed a deed thereof to this defendant, as will fully appear by reference to said deed duly recorded among the land records of said District in liber No. 722, folio 250, and to a copy thereof filed with the answer of defendant Shepherd, to which he prays leave to refer as a part of this answer.

4. He adm'ts that Francis McGhan became indebted to the Freedman's Savings and Trust Company, one of the defendants, as alleged, and with the complainants executed a deed of trust to one Daniel L. Eaton, but he denies that said deed of trust was executed to said Daniel L. Eaton as an officer of said company, but to him in his individual capacity for the purposes in said deed stated, as will appear by reference to a copy of said deed of trust filed with the bill of complaint.

53 He admits that said Francis McGhan died on or about the 27th day of October, 1874, and said Eaton on the 16th day of February, 1873.

5. He admits that on the 5th day of April, 1872, the indebtedness secured by said deed of trust being unpaid, a notice of sale of said property was published in the National Republican, a daily newspaper published in the city of Washington, and that said notice was repeated, and was followed by several notices of postponement, until the 1st day of July, 1872, as appears by complainants' Exhibit C, filed with their bill, and also to Exhibit No. 2, filed with defendant Shepherd's answer;

and he avers that said postponements were at the request of, and for the purpose of accommodating, the said complainant Louisa McGhan, who represented that she was sick.

6. He denies that on said first day of July, 1872, the said Eaton, trustee, pretended to sell said property, or that he sold the same as principal manager of said company; and he further denies that at the time of the sale there were present only eight or ten persons, including the trustee, auctioneer, and crier; and he denies that no bid other than the bid of $13,000.00, at which said property was sold, was made for said property at said sale, and that said bid was made by said trustee, Daniel L. Eaton, and that said sale was pretended to be made upon said bid; and he further denies that on account thereof said Eaton executed to said Freedman's Savings and Trust Company an instrument in writing, not under seal, the acknowledgment to which is without date and wholly defective and void. And he avers that said sale was actual and bona fide; that said Eaton made the same in accordance with said deed of trust, which constituted him trustee, not as principal officer of said company, but as an individual acting under authority conferred
54 upon him by the complainants and said Francis McGhan, deceased; that said sale was well attended, as many as twenty persons being present thereat, among whom were several bidders; that said property was sold to the Freedman's Savings and Trust Company, upon the bid of George W. Stickney, for $13,000.00, made for and in behalf of said company, and that said price was fair and reasonable, considering the condition of the property and the estate therein sold. This defendant does not know whether said Louisa McGhan was sick and confined to her bed or not, or whether said Francis McGhan was continuously dissipated in his habits and neglectful of his business at the time of said sale, or whether the same was known to said trustee, Eaton, or not, and he says that it is immaterial whether said allegations are true or not.

He admits that said trustee executed an instrument in writing for said property to said company, a copy of which is attached to plaintiff's bill, marked Exhibit D, and that said instrument is not under seal, and the acknowledgement thereto is without date, but he avers that said instrument is good and sufficient to pass the interest and estate sought to be conveyed, both at law and in equity, and that if any defects exist in said deed they, plaintiffs, cannot avail themselves thereof; and this defendant claims the same benefit by this answer as if he had specially demurred to said bill.

7. This defendant admits that he executed a lease to the United States for the use of the Post-Office Department; that he executed a deed of trust to John W. Alvord and George W. Stickney, as alleged. He denies that on the 16th day of June, 1873, the Freedman's Savings and Trust Company executed to him a quit-claim deed of said property, for an expressed consideration of $18,500, and he avers that said deed is a regular deed of bargain and sale, and that said consideration was
55 actual and bona fide. He denies that he executed a quit-claim deed to defendant Shepherd for said property, and avers that said deed in form is a regular deed of bargain and sale. He denies that said Shepherd assumed with said Freedman's Savings and Trust Company the payment of the promissory notes given by this defendant to said company, and that no other consideration was paid or promised to be paid by this defendant, or defendant Shepherd, than the amounts specified in said notes; and he avers that said Shepherd was not known to said company in said purchase, and that in addition to the promis-

sory notes given as part consideration for said purchase by this defendant, the sum of $1,500.00 cash was paid by this defendant, making the entire consideration in cash and notes aggregate $18,000.00. He admits that the various sums alleged have been received as rent from the Post-Office Department, by this defendant and defendant Shepherd, were received either by this defendant or by defendant Shepherd, and that the sum of $1,050.00 will become due every three months during the continuance of said lease. But he avers that the Congress of the United States, at its last session, appropriated only the sum of $1,800.00 for the purpose of paying the rent of said property, and upon the condition that the *exceptance* by the lessor of said appropriated sum would be as payment and full satisfaction of all claim on account of rent under said lease for the time covered by said appropriation.

8. This defendant, on information and belief, admits the allegations of the 8th paragraph of said bill, and he avers that no circumstances attending the purchase, title, or possession of said property by this defendant, or by said defendant Shepherd, render either of them in anywise accountable to said plaintiffs for said rents and profits.

56 9. This defendant admits that Marshall Jewell is Postmaster-General of the United States, and has charge of the Post-Office Department; that the sum of $1,050.00 will, under the terms of the lease, be due and payable as rent for said property on the 30th day of June, 1875, and that thereafter other rents will become due and payable thereunder.

10. This deponent, further answering, avers, on information and belief, that said sale was fairly and properly made by said Eaton, trustee, after a full and free advertisement of the time, place, and terms thereof, and of the postponements from time to time made; that such postponements were made for the accommodation and at the request of the said Louisa McGhan, one of the complainants; that there was *on* unusually large attendance thereat, and that $13,000.00, the amount for which sale was made, was a fair price for said property, considering the condition thereof and the estate sold. That the debt secured and unpaid interest and taxes, with the costs of the sale, much exceeded said sum, and at the time of the sale to this defendant the said debt, interest, taxes, costs, and other necessary expenditures in and about said property exceeded the amount paid for said property by this defendant. This defendant avers that he acted with perfect good faith in making said purchase; that he had no notice whatever, actual or constructive, of any irregularity or impropriety in said sale, or of any equities existing or supposed to exist in the complaints, or any of them, and that his said purchase was made nearly one year subsequent to the day of such sale, and that in cause No. 10023, on the law side of this court, wherein the Freedman's Savings and Trust Company was plaintiff and these complainants were defendants, a judgment of ejectment was recovered November 7, 1872, and possession of said property thereunder, in

57 accordance with the proper writ, delivered by the United States marshal November 25, 1872, and that said judgment is final and conclusive as to the matters and things alleged in said bill.

Further answering, this defendant says that a few days before said purchase was made, B. H. Warner, esq., a real estate agent in said city and District, came to this defendant and represented to him as the attorney or defendant Shepherd, that he, Warner, had made an agreement with the said Free'man's Savings and Trust Company for the purchase of said property, and had also effected the renting of it to the Post

Office Department, acting in his own behalf, but that desiring to be relieved therefrom he had induced said defendant Shepherd to take his place in said transactions; that thereupon this defendant was instructed by said Shepherd to take charge of the matter as his attorney, have the property conveyed direct to the defendant, and execute all the necessary papers; that accordingly this defendant made an offer to said company to purchase said property upon the same terms offered by said Warner and accepted by said company, and after some delay said offer was duly accepted by said company, and meantime the lease, deed of trust to secure said company, and the deed from said Henry D. Loney and wife to this defendant were executed, said deed from Henry D. Loney and wife being procured and the consideration therefor being paid by said company to perfect the title of this defendant. This defendant says that he executed said lease to said Post Office Department as the owner in fee-simple of said property, and not as the mere assignee of the unexpired term held by said Francis McGhan, deceased, by these complainants, and sold by said Eaton and said company.

This defendant further says that the cash payment of $15,000.00
58 made at the completion of said purchase was paid to him by said defendant Shepherd, and that although the title to said property was held by him absolutely, he accounted to said Shepherd for all the rents received by him, and has turned over said defendant Shepherd the amount thereof.

And this defendant denies all and every matter and thing in said bill contained not hereinbefore specially denied or admitted in any way affecting his rights, and submits so far as he is concerned that said bill contains no sufficient averment of facts to authorize this court to grant the relief asked, and that said bill presents no equities upon which such relief can be properly prayed, and he prays that he may have the same benefit of this defence as if he had demurred to said bill for want of equity.

And having fully answered, &c.

A. C. BRADLEY.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Andrew C. Bradley, being duly sworn, deposes and says that he has read the above bill by him subscribed and knows the contents thereof, and that the facts therein stated of his own knowledge are true, and those stated upon the information of others he believes to be true.

A. C. BRADLEY.

Subscribed and sworn to before me this 24th day of May, 1875.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Ass't Clerk.

In the supreme court of the District of Columbia. In equity.

EDWARD CLARK, TRUSTEE, ET AL.,
vs.
COMMISSIONERS F. S. & T. CO. ET AL. } No. 4260.

The complainants hereby join issue with the defendants.

SHELLABARGER & WILSON,
J. G. BIGELOW,
Complainants' Solicitors.

59 COMPLAINANTS' TESTIMONY.

Be it remembered that at an examination of witnesses begun and held on the 9th day of June, A. D. 1875, and continued from time to time until the twenty-ninth day of July, A. D. 1875, when the written depositions were taken, I, F. B. R. Sands, an examiner in chancery, did cause to be personally present at my office, No. 490 Louisiana avenue, Washington, D. C., Charles Flaesch, Jesse B. Wilson, Hiram W. Brelsford, Edward Clarke, William J. Wilson, George F. Lamborn, Louisa McGhan, John C. Riley, William Orme, John T. Sullivan, and William H. Pope, to testify on the part and in behalf of complainant in a certain cause now depending in the supreme court of the District of Columbia, wherein Edward Clarke et al. are complainants, and the Commissioners of the Freedman's Savings and Trust Company et al. are the defendants.

F. P. B. SANDS,
Examiner in Chancery.

Met pursuant to written notice served upon counsel for respective parties and attached hereto.

Present, Messrs. Wilson and Bigelow, sol'r' for compl'ts; Mr. Bradley, sol'r for def't; Mr. Totten, sol'r for def't. Mr. Cook not present.

Deposition of Charles Flaesch.

Whereupon CHARLES FLAESCH, a witness of lawful age, produced on behalf on complainants, being duly sworn according to law, deposes and says:

I reside at No. 932 E street, n. w., in this city. I keep a boarding house, and have been living there for 6 years and a half. I know neither the parties, complainant nor defendant.

I have lived in Washington about 12 years.

By Mr. Bigelow:

I was present at the auction sale of the property of McGhan, July 1st, 1872.

I went there for the purpose of purchasing the property, and the property was knocked down too quick. It was knocked down in less
60 than ten minutes. It was knocked down to a gentleman who was there in a buggy. I do not know his name.

He was an elderly gentleman with a white beard.

His buggy was on E street, heading up towards the Treasury Department.

I was standing not less than fifteen feet from the buggy.

I went to Mr. Stickney in the Freedman's Bank. I asked him how much he wanted for rent of the house.

I did not know Mr. Stickney at the time of the sale, but became acquainted with him afterwards when I went to the Freedmen's Bank to rent the property.

The gentleman who sat in the buggy and who made the bid for the house was not Mr. Stickney.

I did not make any bid on the property. I was waiting until the others were done. I did not think it would go so quick. They knocked it down too quick. I was going to bid fifteen thousand dollars for the property. I would give that for it to-day.

I had the means to pay for it at that time in bonds; government bonds.

The buggy, in which was the gentleman to whom the house was knocked down, was standing near the tree in front of the house.

The auctioneer did not mention the name of the person to whom the property was knocked down; he merely made a sign to the gentleman in the buggy.

It was four or five days after the sale that I went in company with my wife and Mr. John Hubbard to the Freedmen's Bank, into the back office where we saw Mr. Stickney. Mr. Hubbard is now dead. I went to Mr. Stickney and asked him how much the rent was.

He said two thousand dollars a year.

I offered him $1,800, monthly in advance.

I then asked him for how much the property would be sold. He answered $22,000.

This was at the same time.

He refused my offer to rent at $1,800.

I have been through the house. I went through six years ago. At the time of the sale I did not go into it. I had seen it before, long before.

I cannot state what the property is worth, as I am not a judge of that.

Q. Have you been to an auction sale of real estate since that time?

61 (Objected to as immaterial.)

A. I have not.

Q. Had you frequently attended auction sales before that time?

A. I had only attended one auction sale before that of the property of Dr. Morgan; that was about three years ago.

Q. How long was it from the time the auctioneer commenced crying the property before the crying ceased?

A. Not quite ten minutes.

Q. Did you hear the man in the buggy make a bid on the property?

A. I did not. They made bids by signs. I did not see him make a sign. I only know that the auctioneer signed to the gentleman in the buggy when it was knocked down.

My house is just across the street from this property—about two doors below, perhaps.

Cross-examined by Mr. Bradley:

At that time I kept a boarding house; that was and is still my business.

I have been in that business eight years and a half.

I did not own any real estate in the city at that time—all that I own is in solid money.

I cannot tell by memory how long I had been renting my house at the time of that sale. I could tell from my books.

The sale took place in the evening, after 4 o'clock I think.

I cannot recollect the hour, maybe it was at 5 p. m. That is as near as I can come. My dinner was nearly over at the time.

I was at dinner when the crier began the sale. When the bell stopped ringing I went out. I did not look at the watch when I went over. I did not look at my watch when the property was knocked down.

It was not more than ten minutes that the crier was engaged calling the property, I can swear to that.

It was not over ten minutes, I can swear that.

Q. Was it less than ten minutes?

A. It was about ten minutes; I do not think it was more.

Q. Was it not less than ten minutes?

62 A. It may have been a minute or two less than ten minutes. It was not over ten, I think.

Q. You say you went there to bid $15,000 for the property; why did you not bid?

A. I did not bid. I expected they would keep it up a little longer. I did not expect they would knock it down so quick.

Q. Were you not willing to purchase the property if you could for less than $15,000?

A. I expected it would go for more than that. I thought *thought* the Freedmen's Bank had some agents there who would bid, and I wanted to wait until they got through.

Q. Did the auctioneer give no warning before he knocked down?

A. He did give warning, saying, "once, twice, three times," and then knocked it down quick.

Q. What were you doing when the sale was going on?

A. I was standing there just like any other one who wanted to buy it. I was not talking to anybody.

Q. You were paying attention all the time to the auctioneer?

A. All the time. I was not talking to anybody.

Q. Did you notice any one bid on the property?

A. There were some persons putting bids on the property, but they were unknown to me.

Q. Can you describe the persons who were bidding upon the property?

A. I cannot.

Q. How many persons were in the buggy that you refer to?

A. Only one. It was a one-horse buggy—an open one.

Q. Had you noticed this buggy before the sale was concluded?

A. It just came when I went out, and he went off just at the time the property was knocked down.

Q. Was this gentleman alone in the buggy when you first saw it?

A. All alone.

Q. How did it happen that you noticed so particularly the gentleman in the buggy?

A. He was the only one who was there in a buggy. He came up rapidly from Ninth street, and stopped right there.

63 Q. You say that the auctioneer did not mention the names of the party to whom the property was knocked down?

A. He did not.

Q. Have you not made an affidavit relating to the facts of this case before?

A. Yes, sir.

Q. Then this statement in that affidavit, "the sale was announced as he (affiant) understood it to have been made to the Freedman's Savings and Trust Co.," was not true, was it?

A. It must be true. What is in there is true.

Q. Then the announcement was made that the property was knocked down to the Freedman's Savings and Trust Co., was it not?

A. The announcement was not made, but some bystanders said it was for the Freedman's Bank.

Q. Then you do not know how it was that the bystanders were made acquainted with the fact that the property was knocked down to the Freedman's Savings and Trust Co.?

A. I do not know.

Q. You went away from the sale with the understanding and assurance that the property was sold to the Freedman's Savings and Trust Co., did you not?

A. Yes, sir.

Q. Did you make any effort to make any bid upon the property at the time of the sale?

A. I did not. I intended to.

Mr. Bradley desires it noted that on behalf of the other counsel for the defense the right to recall the witness for further cross-examination is reserved.

Redirect by Mr. Wilson:

Q. How many persons were present at the sale as near as you remember?

A. There was a small attendance, about 15 men, as near as I can say. I did not count them.

As near as I could say, there were four or five who bid on the property—no more.

Recross by Mr. Bradley:

Q. You have stated in your affidavit filed in this cause, that not more than 8 or 10 persons in all were present. Is your recollection now better than it was at the time you made this affidavit?

64 A. Yes, sir.

Q. Which statement is correct, the one you make now or the one in the affidavit?

A. Some of the bystanders would pass off. There were not more than 8 or 10 persons who were attending to it. I believe Mr. Duffy was there.

Q. You have just stated in your redirect examination that four or five persons were bidding on the property. In your affidavit you state there was none or scarcely any competition in bidding at the sale. Which of these statements is correct?

A. The statement in the affidavit is correct.

Q. Then the other statement is not true, is it?

A. Both statements are correct—one says, very few, and the other says, four or five were bidding.

Q. Then, in this case, where four or five persons were bidding at the sale, in your opinion, there was none or scarcely any competition in bidding. "Is that so?"

A. I do not understand what the word competition means.

CHARLES FLAESCH.

Subscribed and sworn to before me this 9th day of June, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

JESSE B. WILSON, produced on behalf of complainants, being duly sworn according to law, deposes and says:

I have no general occupation at present. I reside in this city, No. 429, 6th street.

I do not know all of the parties to this suit. I know some of them.

By Mr. Bigelow:

I was at the sale of the McGhan property, No. 915 E street, N. W., in this city, on 1st July, 1872.

I went there alone, principally to post myself up in the values of real estate, having seen the sale advertised.

In my recollection there were some 6, 8, or 13 persons present; the company was not large at all.

I heard bidding. I do not know any of the parties who made bids. It was cried out by the crier. So much at a bid. So much again, and so on. I saw Col. Daniel L. Eaton there. I understood that he
65 was the actuary of the Freedman's Saving and Trust Company. He was sitting in a buggy which was standing in the street.

Q. State what took place.

A. I saw the crier pass from where he was standing to the curb near the buggy, and confer or have a conversation with Mr. Eaton. While the sale was being cried Dr. Morgan was there, and I proposed to Dr. Morgan to purchase or bid for it on speculation, and he did not exactly agree with me, and stated why he would not go in.

While in conversation with him the property was said to have been sold—to have been knocked off.

The amount stated by the crier was $13,000. It occurs to me that it was after he came from the buggy that the $13,000 bid was cried.

Q. State as near as you can remember how long the crier was engaged crying the property for sale.

A. I really cannot say. It was not long. I should say twenty minutes, perhaps.

Q. State whether or not there was anything unusual in the manner of making this sale or of the termination of the crying thereof, and whether or not there was any formal announcement of the sale of the property; and if so, state fully all you know in relation to the matters referred to in this question.

(Objected to as leading.)

A. It was knocked off, rather suddenly, I thought, while I was in conversation. I turned around to see. It surprised me, for we were discussing about whether we would purchase or not. The suddenness of the termination of the bidding surprised me. There was none of that usual formality at such sales, of the purchaser coming forward and the name being taken down by the crier on a book which they usually have, and the terms of sale complied with.

It was knocked off as being sold for $13,000. I do not know from whom the announcement came, but it was said that it was sold to the Freedmen's Bank. It was not made by the crier; I saw him.

Q. Was it a subject of inquiry at the time as to who was the purchaser?

(Objected to by Mr. Bradley.)

A. It was, sir.

Q. Are you and were you at that time acquainted with the value of property in the city?

66 A. I have and had some general knowledge.

Q. How long have you resided in the city?

A. About 33 years.

Q. What was the value of that property at that time?

(Objected to by Mr. Bradley, because the witness has not been shown to be qualified to give the value of real estate.)

Q. Had you been, up to that time, a large dealer in real estate in this city?

(Objected to.)

A. Comparatively speaking, I had. Almost all my real estate transactions had been prior to that time.

Q. What was the value of that property at that time?

A. I thought it was low at that time at $20,000.

Cross-examined by Mr. Bradley:

At the time the sale was going on I was from 15 to 20 feet from the crier.

I had my back turned to the crier and was in conversation when the property was knocked down.

Q. What was it that attracted your attention to the fact that the property had been knocked down?

A. The manner in which the sale was announced.

Q. Did you notice any other business men besides Dr. Morgan who were known to you there?

A. I cannot remember distinctly now, but think there were some there whom I spoke to.

Q. Did you notice whether Col. Eaton was alone in the buggy, or whether there was some one with him?

A. There was some one with him. I cannot say positively from my memory now who it was.

Q. Upon what do you base your estimate of the value of the property then?

A. There were fine improvements. It was a very fine building. The inside work was fine oil fresco, somewhat damaged, but struck me as being a fine order of building; a good front—about 25 or more feet, I judged. A four-story building, press-brick front, brownstone trimmings, stable, and fine yard. I cannot say as much for the location as I can for the building. I know the time when it was the finest location in the city.

Right to recall witness for further cross-examination reserved on behalf of counsel for co-defendants.

67 Redirect by Mr. Wilson:

Q. State whether or not the time of the sale was a favorable or unfavorable one for procuring the value of the property.

(Objected to as being subject matter of direct examination.)

Please state what time it was (suggested 1st July, 1872). It is regarded by auctioneers and others as an unfavorable time.

(Objected to.)

It is an unfavorable time, in point of fact.

Q. Why is it an unfavorable time?

A. It is a hot season of the year, and between the two seasons when property will bring better prices.

Q. State whether or not at that season of the year persons who are able to buy such property are to any considerable extent absent from the city.

(Objected to as leading, too general, and necessarily not within the knowledge of the witness.)

A. To a considerable extent they are absent from the city.

Recross-examination:

Q. Do you consider that those persons who customarily absent themselves from the city about the 1st of July are to a great extent those who are able to and do deal in real estate of the value of the property in controversy?

A. Yes; persons who are able and do buy such property do absent themselves from the city to a very great extent during the hot months.

Q. Do you know as a matter of fact whether or not there were a number of persons still remaining in the city at the time of that sale who were able to purchase that property if they so desired?

A. There were a number of persons in the city who could have purchased that property.

Q. Do you not consider that the latter part of April or any time in the month of May or early part of June would be a favorable season for selling real estate at auction?

A. I do believe that April, May, and the early part of June are favorable seasons for selling real estate.

J. B. WILSON.

68 Subscribed and sworn to before me this 9th day of June, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

At 2.50 p. m. adjourned to meet Thursday, 10th June, at 12 m.

Met this 10th June at 12 m., pursuant to last adjournment.

Present, Messrs. Wilson & Bigelow, sol'c't's for compl't; A. C. Bradley, esq., for defendant.

Mr. Cook and Mr. Totten, though duly notified, did not attend.

Deposition of Hiram W. Brelsford.

Whereupon HIRAM W. BRELSFORD, a witness on behalf of complainant, being duly sworn according to law, deposes and says:

I reside at No. 518 10th street, N. W., in this city. Am an attorney at law in practice here in this city.

I know some of the parties to this controversy; some of them I do not know.

By Mr. Wilson:

I know the property in controversy, No. 915 E st., N. W. I occupied rooms in that house from 1866 or '67 until 1870. I am familiar with the character of the improvements on that lot.

I believe it was about the 1st or 2d of July, in the year 1872, that this property was sold at public auction. I was present. B. H. Warner was the auctioneer. I think not more than twenty were present at that sale, as near as I can remember.

I remember seeing there John Wesley Smith, Dr. Morgan, Mr. Flaesch, Mr. Lanborn. I do not believe I can recollect any other, except Mr. Eaton, Warner, Sweet, who, of course, were all present.

I was there when the crying was begun. I was there until it was concluded. From the time it began until it was concluded, to the best of my recollection it was not more than from 5 to 10 minutes. Mr. Eaton was sitting in a carriage directly in front of the premises.

69 When the crier commenced, I think there were three or four bidders. After crying for a few minutes they all dropped out leaving but two, Mr. Smith and Mr. Eaton.

I do not think there was any formal knocking down of the property, at least I heard none, and I left with the impression that there had been no sale.

Q. If there was anything unusual in the termination of the crying, state what it was.

(Objected to by Mr. Bradley.)

A. Nothing more than I have stated that the sale came to an abrupt termination, without any formal knocking down of the property.

Q. Was there any announcement by the crier of the name of the purchaser?

Objected to as leading.

A. None at all, sir.

Q. What was the amount of the last bid for the property?

A. A little over $13,00 ; the exact amount I do not remember. I will correct this; the last bid I remember to have heard was less than $13,000.

Q. What was the last bid that was cried?

A. I cannot state the exact bid, but it was less than $13,000. To the best of my recollection and belief Mr. Eaton did bid at that sale.

Q. State whether or not his was the last bid cried.

(Objected to.)

A. It was.

Q. Are you acquainted with the values of real estate in this city?

A. Yes, sir. Somewhat.

Q. What was that property worth at that time?

A. I should think it was worth $22,000.

Q. State whether or not the time of the year when that sale was made was favorable or unfavorable for getting the value of the property.

(Objected to.)

A. I should regard the time as very unfavorable.

Q. State the facts upon which you predicated that statement.

A. Upon the fact that many business men are absent at that time from the city, and from a general depression of business which there is at that time of the year.

70 Q. Were you acquainted with Francis McGhan?

A. I was. He is now dead. He died some time during the last winter, February, I think. I had known him from 1866 to the time of his death.

Q. What were his personal habits at the time of this sale and for a year or too prior thereto?

(Objected to as immaterial.)

A. He had been very intemperate for two years prior to the time of this sale—so much so as to greatly incapacitate him from the transaction of business.

Q. What, if any, effect had his intemperate habits upon his attention to business?

(Objected to as irrelevant and immaterial.)

A. It caused him to neglect it of course.

Q. State whether or not his habits as above stated by you were notorious?

(Same objection.)

A. They were, sir, in the neighborhood. It was a matter of almost daily occurrence to see him brought home in a state of intoxication.

Q. Are you acquainted with Louisa McGhan?

A. I am. She is the widow of Francis McGhan. I have known her since 1866.

Q. What, if anything, do you know of the state of her health at the time of this sale and for a year or two prior thereto?

A. I know that she had been in delicate health for some months, perhaps a year before the sale took place. I lived opposite at the time of the sale, and know nothing more definite than that she was confined to her house at the time of the sale and for some time prior thereto.

Cross-examined by Mr. Bradley:

Q. How long have you been practicing law?

A. Four years.

Q. Do you confine your attention to any particular branch of the law?

A. No, sir.

Q. Do you own any real estate in this city?

A. I have an interest in some real estate in this city, sir.

Q. Have you ever dealt in real estate?

A. No, sir.

71 Q. Has it been your custom to give attention to any extent to sales of real estate at auction?

A. No, sir, it has not. My only knowledge of real estate in the city was derived from a general knowledge of the value of real estate here.

Q. What was your purpose in attending this sale of the McGhan property?

A. Simply that this unfortunate condition of affairs with the McGhans was well known in the neighborhood, and a great deal of interest was manifested and sympathy felt by the people living in the vicinity, and as I had known them for some time, I felt a kindly interest in their affairs; and it was with a view to ascertaining what disposition would be made of the property that I attended the sale.

Q. Had you ever attended an auction sale of real estate before that time?

A. Yes, sir, many of them.

Q. How many?

A. That would be a very difficult matter to determine. Many times I would be passing along where such sales were taking place, and an idle curiosity would prompt me to stop and watch the sale. But, exactly how many auction sales I have attended it would be almost impossible to state. I never attended but one with the object of purchasing.

Q. What were you doing whilst this auction was transpiring?

A. I believe I was listening attentively to what was transpiring around me.

Q. Were you not conversing with Mr. Lamborn?

A. Not at the time of the crying of the property, nor, I think, with any one else.

Q. What time did the crying commence?

A. That I am unable to state as to the hour or the minute.

Q. Did you time the sale by examining your watch to see how long the auctioneer was engaged in crying it?

A. I did not. It occupied but a very brief time.

Q. Are you positive it was less than ten minutes?

A. Yes, sir; I think I could state that it was less than ten minutes; of course, this is to the best of my recollection at the present time.

72 Q. Do you not think that the statement by an intelligent business man who attended the sale, that the auctioneer was engaged about 20 minutes in crying it, is as near accurate*ly* as yours?

(Objected to because irrelevant, and as assuming and calling for the opinion of the witness.)

A. I have given my best recollection of the matter, but at the same time do not assert that I am entirely accurate.

Q. Did you see any one with Mr. Eaton in the carriage?

A. I think he was alone—I am not positive, however.

Q. Do you mean to swear positively that Mr. Eaton made the last bid?

A. He made the last bid I heard—I am reasonably certain of that.

Q. Do you swear to it as a fact?

A. I swear to the fact that he made the last bid that I heard.

Q. What was that bid?

A. I have stated on my examination in chief, that I am unable to give the exact amount—I think it was about $13,000.

Q. Are you positive that there was no announcement made of the sale, or is that only your impression?

A. I heard none made, although near enough to have heard, had any been made—I was within ten feet of the crier.

Q. How near to Col. Eaton?

A. I should judge about the same distance; he was in the carriage near the curbstone. I misunderstood the question—I was 15 feet from Col. Eaton.

Q. Were you standing between Col. Eaton and Mr. Sweet?

A. No- sir; Mr. Sweet was between me and Mr. Eaton—not directly between us, but to the right and in front.

Q. As a matter of fact, was there or was there not a good attendance of business men at that sale?

A. No, sir; the attendance was very meagre—I do not recall nor do I think there were more than six present, who had the means to purchase such a piece of property.

Q. Do you consider the time at which this sale was made as the most unfavorable one in the year for such a purpose?

A. I do.

Q. What is the value of the real estate interest you hold in this city?

A. About $800.

H. W. BRELSFORD.

73 Subscribed and sworn to before me this 10th day of June, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Deposition of Edward Clark.

EDWARD CLARK, one of the complainants in the suit, being duly sworn according to law, deposes and says:

I reside in the city of Washington, and am by profession an architect. I have as such been employed on business in connection with the public buildings during the past 22 years.

By Mr. Wilson:

I have some knowledge of the property in controversy, No. 915 E street. I made the ground-plan of the building, and as a creek ran right under the corner of the building, I went on the ground whilst the foundations were going up to give advice to overcome the structural difficulty arising from the sewer running under the corner of the building. I have been, also, in the house once or twice since its completion, and before the sale; it was soon after the completion. I do not feel competent to give the market value of the property, but I still believe it worth at least $20,000 on the 1st July, 1872. The building itself could not be erected under $18,000. There is a good deal of difference between the cost of the building and its worth. It could be built for that. I mean the main building. I do not include the other house, the stable building, &c., which a thousand dollars, I think, would cover.

Q. State whether or not the 1st July, 1872, was a favorable or unfavorable time for obtaining a fair value for this property.

A. In my opinion it was not a good time to sell, as in that time of the year many of the permanent residents of the city who have means to

purchase such a piece of property, and all the non-resident population of the city, leave the city.

Cross-examined by Mr. Bradley:

Q. Was not 1872, the early part, the long session of Congress, and did Congress adjourn before July?

74 A. I think not—I don't think Congress sat as late as July, except during the war.

Q. Did not the difficulties of securing a good foundation for the house very materially affect the cost of its construction?

A. Not materially; a few hundred dollars only.

Redirect:

Q. State the character of this building as to material and construction?

A. Without a thorough inspection, I regard it as a well-built house and constructed of good materials.

Q. What interest have you in this suit?

A. None whatever, except as trustee, and that trust was made without my knowledge or consent.

EDWARD CLARK.

Subscribed and sworn to before me this 10th day of June, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Adjourned, to meet on Saturday, 12 inst., at 10 a. m.

Met pursuant to last adjournment at 10 a. m. this 12th day June, 1875.

Present, Messrs. Wilson and Bigelow, for compl'ts; Mr. Bradley, for def't.

Deposition of William J. Wilson.

Whereupon WILLIAM J. WILSON, a witness produced on behalf of complainant, being duly sworn according to law, deposes and says:

I reside at No. 1747 O street, n. w. I am now a clerk in the Treasury Department. I know some of the parties to these proceedings.

By Mr. Wilson:

I was at one time connected with the Freedman's Savings and Trust Company. I was from 1866, or perhaps a little earlier, 1865, down to August, 1872, the cashier of the Washington branch of that company.

75 I may be mistaken as to the exact date I ceased to be cashier.

I was made general agent of the company upon ceasing to be cashier, and in that capacity was connected with the company until the time of the failure of Jay Cooke & Co. until the 1st Nov., 1873.

The officers of the bank during the year 1872 were John W. Alvord, president; George W. Stickney, actuary.

I do not remember the exact date of the resignment of D. L. Eaton. He resigned to take charge of the 2d National Bank.

He was the first actuary of the company, and before he resigned G. W. Stickney was the assistant actuary. Upon Mr. Eaton's resignation Mr. Stickney was made the actuary.

I cannot recall the exact dates in these matters without refreshing

my memory. Mr. Stickney was made assistant actuary about a year or two before Mr. Eaton resigned.

Q. Did Col. Eaton hold any other official relation to the company during the time he was actuary?

A. Not to my knowledge.

Q. What duties did he perform as actuary?

A. It seems to me that he had the general supervision of the branches. Being the actuary here he had supervision of the branches. He gave general direction to the business of the branch here.

Q. What duties was Mr. Stickney performing as assistant actuary?

A. He aided the actuary in the performance of the business and supplied the place of the actuary in his absence.

Q. Under what supervision, if any, was Mr. Stickney during that time?

A. Under the supervision of the actuary as his assistant.

Q. To whom did you make your reports as cashier?

A. To the actuary.

Q. State as fully as you can what Mr. Eaton did there as actuary of that bank.

A. He had general supervision over the Washington branch, and direction of its affairs.

Cross-examined by Mr. Bradley:

Q. What were your particular duties whilst you were cashier of the Washington branch?

76 A. To receive deposits, pay drafts, make up or look after the making of reports, and attending to the minutiæ of the general affairs of the branch.

Q. Were not your duties such as to confine your attention almost exclusively to the counter, and did you not perform the duties of teller as well as cashier?

A. Yes; they were; and I did perform the duties also of paying and receiving teller as well as cashier. During business hours I was confined to the counter; afterwards I attended to such other business as the branch demanded as cashier.

Q. What is your personal knowledge of the particular duties performed by Mr. Eaton as actuary?

A. General oversight over the business of the branch. He gave directions to me, and I always acted under his directions.

Q. What other special duties did he perform within your personal knowledge besides giving directions to you?

A. I cannot say.

Q. Was Col. Eaton, as actuary, a salaried officer of the bank?

A. He was a salaried officer of the Freedman's Savings and Trust Company.

Q. Were not his duties with relation to the operations of the Washington branch, so far as giving directions and controlling the disposition of its funds, similar to those of the cashier of a national bank?

(Objected to by Mr. Wilson.)

A. I cannot answer that question, as I do not know.

Q. Will you please explain the relations of the Washington branch to the different other branches of the institution and to the principal office of the company?

(Objected to as irrelevant and incompetent.)

A. I understood it to be in no way specially related to the other branches, and entirely related to the parent company. I mean that the

branches were not responsible to each other, but only to the parent company.

Q. To whom was the actuary subject?

A. I understood him to be subject to the president and trustees of the company.

Q. Who was the president of the company in 1872?

A. J. W. Alvord.

77 Q. Do you remember the names of the trustees?

A. I do not. The full board was about 50, but I think 13 or 14 constituted a quorum. The principal office was here in Washington.

Q. So far as your knowledge extends, were not the operations of the different branches of this institution, including the investment of their funds, entirely separate and distinct?

A. My understanding was that the funds of the different branches were sent to the parent office, and by it invested; the branches having nothing whatever to do with making investments.

Q. Then, so far as you know, the Washington branch of this institution had nothing to do with effecting investments here?

A. The Washington branch, as such, had nothing to do whatever with making investments.

Q. I understood you to say that Colonel Eaton, as actuary of this institution, exercised direction and control over the affairs and operations of the Washington branch, within your knowledge; but that your knowledge did not extend to his duties, with relation to the principal office of the company—is that so?

A. Col. Eaton exercised the same supervision over all the branches. Col. Eaton was actuary of the principal office, which gave him equal control over all the branches.

In making exchanges between the branches I have personal knowledge of the fact that he had equal control over all of them.

Remittances made from branch to branch were always to the actuary of the parent office and from thence to the branch.

Q. When your duties as cashier were such as to confine you to the counter of the Washington branch, and the operations of the Washington branch and of the principal office were entirely separate and distinct, how can you have personal knowledge of the general operations of the principal office or of the duties that Col. Eaton as actuary exercised with relation to the principal office?

A. To first clause of the question: when confined to the counter it was as teller and not as cashier. But in my capacity as cashier it was my duty to take cognizance of exchanges, which were made directly to the principal office of which Col. Eaton was actuary; and

78 therefore I have personal knowledge of his duties as actuary in that regard, and of the connection between branch and principal office.

Q. Then your knowledge of the matters referred to in the preceding question is based upon the fact that as a branch you had exchanges with or through the principal office?

A. Partially so, certainly—I do not claim to know all about the actuary's duties.

Q. Were not your duties with relation to the Washington branch during business hours such as to confine you at your post?

A. I had two or three posts.

Q. What I mean is did it not confine you to your duties as officer of the Washington branch?

A. Yes, sir.

Q. Did you time the duration of the auction by examining your watch or anybody else's?

A. No, sir.

Q. Then how can you be positive that the crier was not engaged over 15 minutes?

F. From the fact that there were only three bidders at the outset, and they dwindled down in less time than it takes me to tell about it to two bidders, and then in a very short time it ceased altogether, and it could not have been over 15 minutes.

Q. Then your statement as to the time occupied is based not upon any estimate or calculation of the number of minutes made at the time, but upon a course of reasoning based upon the facts that did transpire on that occasion?

A. Yes, sir.

Q. Had you ever before attenedd an auction sale of real estate?

A. I have one that I remember.

Q. What do you understand by the knocking down of the property at an auction sale?

A. When it is sold to the highest bidder—when the crier announces "going; once, twice, third and last time, and gone."

Q. Are you positive that this cry was not made by the salesman?

A. Yes, sir.

Q. Are you positive that no announcement whatever was made of the sale?

A. Yes, sir.

Q. What were you doing whilst the sale was transpiring?

A. I was standing to the left of the auctioneer. I was not conversing.

82 Redirect:

Q. Did you or not pay particular attention to what transpired at the time you are speaking of?

A. Yes, sir; I did.

Q. State whether or not these occurrences impressed themselves upon your mind at the time.

A. Yes, sir.

Recross examination:

Q. Why did you take such particular notice?

A. With regard to the announcement made at the close of the sale that I spoke of, the reason that I remember it so distinctly is, that I thought the Freedman's Bank was so extremely kind in wishing to give Mrs. McGhan some benefit out of the sale. They being neighbors of ours and knowing their condition was one of the reasons I took such interest.

GEORGE F. LAMBORN.

Subscribed and sworn to before me this 12th day of June, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Deposition of Louisa McGhan.

LOUISA MCGHAN, for complainants, being duly sworn according to law, deposes and says:

I reside at No. 1340 8th street, N. W., in this city. I am the widow

of Francis McGhan, deceased, and am one of the complainants in this suit.

By Mr. Wilson:

I know the property No. 915 E street, N. W., in controversy.

Q. Do you know of any loan being made on that property by the Freedmen's Savings and Trust Company? And, if so, state the amount and who got the money.

A. I only know as far as I was told that it was $10,000, and my husband got the money. I did not get the money.

Q. Was this property put up at auction at any time? And, if so, state when it was, as nearly as you can remember.

A. It was in the first part of July. I do not recollect the date.

At the time the property was offered for sale, I was up in my bedroom in the house.

83 Q. What was the state of your health at that time?

(Objected to.)

A. I had been quite ill for some months. I was not able to be out on the street. I could pass from one room to another, but did not go downstairs.

I sent a communication on the date of the sale, but I do not recollect whether I sent it to Mr. Warner or to Mr. Eaton; the nature of the communication being that I requested them not to allow the property to be sacrificed.

(Objected to by Mr. Bradley.)

That communication was not in writing. I do not recollect the gentleman's name. I sent my son to him. It was after they had come to the sale, and asked him to come in; it was before the sale commenced, and I made the communication to him.

At the time of the sale I had lived there for seven years. My husband had that house built himself. There was some part of the building out of order at the time of the sale.

The two bath rooms were out of order—all the material was there ready to be put in place—but nothing was broken. The kitchen was somewhat out of order, and the furnace was out of order.

In the kitchen there was a leak in one of the water-pipes—a break in one of the window-sills—a glass was broken out—and the range was out of order, but we used it to cook on.

In the wash-room the pipes were somewhat out of order, but not to great extent—we used them.

The furnace had been taken down to be rebuilt, and from splitting wood on it from five to seven bricks were broken out of the sewer. There are two cellars to the house—the other cellar on the ground floor was in order. The back area and steps were in order.

In the dining room four panes of glass were broken out.

The dumb waiter was out of order—the weights and material were there; it only wanted putting in order. The hall, dining-room, and parlors were in order, except where in the parlor-door I undertook to put a small bolt, and made a bungling job of it, and water from the bath-room had injured the fresco in the vestibule and about four feet into the hall; the ceiling only, not the sides.

In the dining-room about two yards square of plastering had fallen, caused by a leak in the bath-tubs.

84 I do not recollect anything else wanting except that the walls upstairs needed whitewashing, and the white paint needed repairing. Some door-knobs were off and some keys. The chandeliers in

the parlor had been removed, and that in the lower hall and in two of the rooms upstairs.

The rest of the gas fixtures remained there—and were in good order.

The candelabra were removed from the mantel-piece where they united with gas-pipes.

I think this was every iota in which the main house was out of order.

The stable had been burned out partly on the inside—the wood-work of it.

Cross-examined by Mr. Cook:

My husband died on the 27th of last October. He did not live in the house in question at the time of his death. We lived on N street at the time of his death.

I had been sick, confined to my bed part of the time, prior to the sale. Dr. Riley attended me about the time of the sale, and prior to that Dr. Gately.

My husband attended to my business for me when he was living—he did so with my consent. I cannot say with my approval. He told me that he got the money from the Freedman's Bank. I approved partly of his getting it; he got it with my consent partly.

I signed a deed of trust when he got the money. I don't recollect signing a note. I cannot say how long after my husband's death it was that I took a notion to bring this suit.

We had it under consideration before his death—he and I—because we did not think it brought a fair price, being sold under unfavorable circumstances. My husband said so in the first place. Since his death no one told me so until I went up to Mr. Bigelow and got his advice. Before his death my husband said so, and as he was an intelligent man, I always took an opinion from him. I always relied upon his opinion to some extent when he was sober; I did not, however, when he was drinking.

I made application to Mr. Bigelow. I had heard that there had been some defect in the seal. I cannot recollect who it was I talked to about it. I mentioned it to Mr. Robert Graham. I did not mention it to Mr. Clark at that time.

85 It was some weeks ago that I mentioned it to him—a little previous to bringing the suit.

I mentioned it, also, to Mr. John N. Oliver. After seeing Mr. Bigelow I asked him to take it in hand and go on with it and he did so. My husband had always impressed on me that it was not a fair sale.

The sale had been once postponed at my request, on account of the state of my health, by Mr. Warner.

I can obtain the means to redeem the property. I haven't it right in my hands, but I can obtain it from somebody else. I have partially made the arrangements for that purpose.

Q. With whom?

(Objected to as being immaterial.)

A. With Mr. Bigelow.

I did not after the sale make any offer to return the money borrowed. I do not know what my husband did.

My husband kept up the household expenses chiefly, up to the time of his death.

We had eight in all in the house. The oldest child is 17 next October. At the time of the sale the youngest child was between two and three years of age.

By Mr. Bradley, Mr. Cook having left:

Q. From whom did you first hear anything relative to the deed to the bank being defective, by reason of its not having a seal?

A. When I went up to consult with Mr. Bigelow, I asked him all in connection with it, and he mentioned that among the rest. Mr. Graham was the first one mentioned to me about the house since my husband's death, and then Mr. Oliver. I got Mr. Bigelow's address from Mr. John N. Oliver.

Q. Was that your first visit to Mr. Bigelow?

A. That was, and the first time I ever saw or consulted with him to my knowledge.

Q. Please state how it was that Mr. Oliver happened to mention Mr. Bigelow's name to you.

A. I asked Mr. Oliver where Mr. Bigelow lived, for I wanted to have an interview with him to put this case in court.

Q. How did you know that Mr. Bigelow knew anything about the case?

86 A. I heard from some one outside, that Mr. Bigelow said the seal was defective.

Q. That was brought to you as a message from Mr. Bigelow, was it?

A. It was not—Mr. Bigelow had no communication with me.

Q. What else was stated to you at the time that Mr. Bigelow's name was mentioned to you with reference to his knowledge of your case?

A. I do not recollect anything else except that about the seal.

Q. This was the first time that you had consulted any attorney with reference to putting your case in court, was it not?

A. I asked Mr. Oliver and he did not seem to think very favorably of it, and I went to Mr. Bigelow. He did not send me to Mr. Bigelow, but had mentioned his name prior to that.

Redirect by Mr. Wilson:

Q. With reference to the procurement of money, I would ask you to state if it was not arranged between you and Mr. Bigelow that he, as your attorney, was to make arrangement to get the money in the event of a redemption, and when the amount necessary to redeem was ascertained?

A. Yes, sir; that's what I meant by the partial arrangement.

Q. Did you first go to Mr. Bigelow in reference to this matter?

A. I did; I hunted him up—I applied to Mr. Graham two or three times and to Mr. Oliver, who told me where his (Bigelow's) house was on 9th street. Mr. Graham told me he would send him up, and I was indignant at his not coming and went to Mr. Oliver, who told me where he lived, and I went there one evening about dusk; he lived on 9th street near Q, as near as I can recollect.

I told him I wished him to take it in charge and instigate it and take it in court. I asked him all he knew about it.

Recross examination, by Mr. Bradley:

Q. Then Mr. Graham first mentioned Mr. Bigelow's name to you, did he not?

87 A. I do not remember whether he was or not the first one who mentioned Mr. Bigelow's name; he mentioned to me about the house.

L. McGHAN.

Subscribed and sworn to before me, this 12th day of June, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Adjourned to meet Monday, 14th June, at 12 m.

Met pursuant to adjournment this 14th June, A. D. 1875, at 12 m.

Present, Messrs. Wilson & Bigelow, sol'r's for compl't. A. C. Bradley, esq., sol'r for df'd't.

Deposition of Dr. John C. Riley.

Whereupon JOHN C. RILEY, produced on behalf of the complainants, being duly sworn according to law, deposes and says:

I reside No. 1407 New York avenue, in this city. I am a physician by profession. I know the complainant Mrs. McGhan, and other parties to the suit.

By Mr. Bigelow:

I have been in practice as a physician since June, 1851.

I knew Mr. Francis McGhan in his lifetime. I have known him since 1865; I do not know the date of his death; I was his family physician since 1865 to the present time; I have not for some months prescribed for any of them. I consulted my books since making my affidavits filed in this cause, and so ascertained exactly when I was first called to attend this family.

Q. State what the habits of Francis McGhan were, if you know, for a year or two prior to July 1st, 1872.

(Objected to as irrelevant and immaterial.)

A. From what I saw of him myself and from what I heard of him from his wife, I judged he was drinking inordinately, and his wife frequently consulted me as to what she had best do with him to stop his drinking.

I remember that more than once she consulted me as to the propriety of sending him to the insane asylum.

88 Q. I'll ask you to state whether during this period that you were the family physician, you attended Mrs. McGhan for any sickness or disease, and, if so, state fully the nature of the disease or illness and the cause of it.

(Objection repeated.)

A. I attended her principally for diseases of her nervous system, brought about by want of rest and excessive worry of mind, due, as I thought at the time, to the habits of her husband. This was pretty much all the time after his return from his western trip. It was about the time when she was so anxious about her property, which had become so entangled. In fact, I never went to the house when he was home that he was not drunk.

Q. State whether the prostration of her nervous system was to such an extent as to make her unable to attend to her business, physically as well as mentally.

(Objected to as leading, irrelevant and immaterial.)

A. I do not think it affected her physically as much as it did mentally; she seemed to be always worried and anxious and in dread of injury to herself from her husband, as a woman naturally would be whose husband was coming home drunk frequently.

(Inferences of the witness objected to.)

I could not state whether or not she would be able to do business, as she did not consult me in reference to her business, but only as her physician. She suffered frequently from hysteria and other nervous affections caused by want of rest and worriment.

By Mr. Wilson:

Q. As a professional man, judging from her condition physically and mentally, as you observed her, what is your opinion as to her capacity at that time to take care of and manage important business affairs?

(Objected to, as already answered.)

A. During these attacks whilst I was attending her she certainly was not capable of attending to business. During the intervals when I did not attend her I, of course, cannot say. I saw her at intervals, perhaps, of a month or so.

89 Q. How long did these attacks continue?

(Same objection made.)

A. I suppose I visited her for a week constantly at a time.

Q. Was Mr. McGhan's intemperance occasional or habitual, if you know?

(Objected to.)

A. I never saw him during this period when he was not intoxicated. I saw him occasionally when I went there; he was totally unable then to attend to any sort of business; he was in a state to be locked up—you might say he was insane, unmanageable, as any intoxicated man would be. This condition has reference only to the period of 1872 to which I have been alluding; it was not his condition when I first visited him. At the time I refer to he was living on the north side of E street, between 9th and 10th streets.

Q. Are you able to state from the condition in which he was at the times you saw him as above stated, as to what was the general condition of his mind with reference to his ability to take care of and manage important business affairs? and if so, state what his mental condition was in that regard.

(Objected to as irrelevant and immaterial, and because the witness has not been shown qualified to testify on that subject.)

A. His mind was very much enfeebled, was very much weakened by his continued "alcoholism." Had he stopped drinking for a reasonable length of time he would have recovered from the effects of it. In the condition he was when I saw him he was in a condition not to be able to attend to any sort of business. I frequently did not see him for long intervals, and his condition during that time I do not know. Now and then when I saw him there and he was drunk, I would talk with him and offer to give him something, but he would not take anything from me—the thing he wanted to have was whiskey only. I did not attend him during this time as his physician; if I ever did prescribe for him it was incidentally, whilst I was visiting his wife; but I don't think he ever took any medicine.

Q. Do you remember the fact of the sale of the property he was living in?

90 A. No; I only knew they were in trouble there.

Q. State whether or not it was while they were in trouble about the property that Mr. and Mrs. McGhan were in the conditions respectively referred to above?

(Objected to as leading and immaterial.)

A. It was about that period, and some time before it, that I attended them for the troubles mentioned above.

Cross-examined by Mr. Bradley:

Q. What personal knowledge have you, if any, of the property trouble you referred to, or for how long a period this trouble lasted?

A. I have no personal knowledge of the matter except that learned

from Mrs. McGhan, as to her being reduced to poverty from the habits of her husband.

Q. During what part of 1872 did you attend Mrs. McGhan for the attacks referred to, and how long did these attacks generally last?

A. I attended her at intervals of about a month during the year, and for about a week at a time on those occasions.

Q. Have you attended her for the same troubles since then?

A. Not as frequently as during the time I have reference to. I visited her since on N street, opposite the Presbyterian church.

JNO. C. RILEY.

Subscribed and sworn to before me, this 14th day of June, A. D. 1875.

J. P. B. SANDS,
Examiner in Chancery.

Adjourned to meet at 12 m., Tuesday, 15th instant.

Met this 15th day of June, at 12 m., pursuant to last adjournment. Present, Messrs. Wilson & Bigelow, sol'rs for pl't'ff; A. C. Bradley, sol'r for def't.

Deposition of William Orme.

Whereupon WILLIAM ORME, a witness produced on behalf of plaintiff, being duly sworn according to law, deposes and says:

91 I reside on 9th street, northwest, in this city, No. 728.

I am engaged in the grocery business.

I know some of the parties to the suit; others I do not.

By Mr. Wilson:

I have resided in the city of Washington about thirty-five years. I have been building and buying and selling houses in this city. It is not my business, and I do not speculate in them, but I buy on my own account, and if I find a good offer I sell. When I do buy, I buy for investment.

I own, I guess, about sixteen or seventeen houses in the city.

At one time I was pretty good at estimating the value of real estate. In 1840 I commenced buying and building a little—say I built a house once a year or so; I have been an observer of the values of real estate more or less from that date to July, 1872. I was in the board of aldermen for ten years, and during that time on the committees of improvements and canals and claims, &c.

I know the McGhan property, No. 915 E street, northwest, in this city.

I observed it when it was being built; at that time I lived just opposite. I own a good many houses in that vicinity, and I always used to notice buildings going up. I used often to cross over and watch this building going up from the foundations.

I think the house is very well built. It is not built of hard wood, that being much more expensive than pine

But I consider it well built—large and commodious.

Its value on the 1st of July, 1872, I should judge, was about $18,000. I think that is a pretty low estimate for the property. It has a good stable worth from $1,500 to $2,000. A good depth of lot running back to a thirty-foot alley.

It is difficult to get an accurate value for property in this locality. Property is not so valuable as it was some years ago, but, as the improvements go to the northward and westward, the best buildings are put up there. I presume that if McGhan's house was on M street, from 9th to 14th or 18th street, or K street, or anywhere in that neighborhood, it would bring from $23,000 to $25,000.

I knew Francis McGhan; at one time he was a good, sober citi-
92 zen, before he got into trouble, when he took to drinking, and for some time prior to his death I never saw him that he was not intoxicated. I used to meet him about once a week, and he would be so drunk that he would not know anybody. He kept that up until he died. I never was in his house. He was a good mechanic, and at one time did a very good business. I do not know when or how he died, other than what the newspapers said.

(All this answer relating to the habits of McGhan objected to.)

Cross-examined by Mr. Bradley:

I did not go to the sale of the property; I never went through the house, except on the lower floor soon after it was built. I do not know its condition at the time of the sale.

At the time of the sale that was not so desirable a locality as on M or K street, northwest; there is no doubt about that.

I have frequently attended sales of property, but did not make a general thing of it. If, when attending a sale, the property suited me, I would buy it.

There is no doubt but that property always brings less at auction than at private sale.

Q. With reference to the assessed value of real estate what is your experience as to the approximation thereto of prices realized at auction sales?

A. You could not come at that well. In the first ward property at auction would not bring the amount of assessment; in other localities property would go up beyond that—and the locality of the property governs this question altogether.

I, of course, based my estimate of this property upon a perfect title, nor would it contain the payment of arrears of taxes.

Q. What would you have been willing to give for this property at that time?

(Objected to.)

A. I did not want to buy; as a speculation it would not be desirable in that locality, as it is hard to rent property so large. I own several houses in that neighborhood, but have never lost a day's rent from them; they being small houses, rent better than a large one. A house that large would have to rent for $150 a month, and being so large
93 would make one of the best boarding-houses in the neighborhood, it having a large back building.

Q. What would you estimate the value of that property subject to an annual ground rent, and to $1,216 arrears of taxes, at that time, July 1st, 1872?

(Objected to, the amount of ground rent not being stated, and as being immaterial.)

A. My estimate was given independent of incumbrances or charges against the property. Of course if the title to the ground was not included, the property would not bring so much.

(The above question and answer is objected to on the ground that the

matters and things therein contained are matters of record which can be produced in the court.)

WM. ORME.

Subscribed and sworn to before me this 15th day of June, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Adjourned to meet at 12 m., Wednesday, 16th June.

Met pursuant to last adjournment this 16th day of June, A. D. 1875, at 12 m.

Present, J. G. Bigelow, esq., sol'c't'r for compl't; A. C. Bradley, esq., sol'c'r for def'd't.

Whereupon counsel for complainants announces that the examination in chief for complainants is closed.

F. P. B. SANDS,
Examiner in Chancery.

94 In the supreme court of the District of Columbia. In equity.

EDWARD CLARK ET AL.
vs.
COMMISSIONERS F. S. & T. CO. ET AL. } No. 4260.

Be it remembered that at an examination of witnesses begun and held June the 25th, 1875, and continued from time to time until the 30th day of July, A. D. 1875, when the within depositions were taken, I, F. P. B. Sands, an examiner in chancery, did cause to be personally present at my office, No. 490 Louisiana avenue, Washington, D. C., John W. Smith, George W. Stickney, Brainard H. Warner, Martin M. Rohrer, Andrew C. Bradley, Edwin J. Sweet, to testify on the part and in behalf of defendants, in a certain cause now depending in the supreme court of the District of Columbia, wherein Edward Clark et al. are complainants and the Commissioners of the Freedman's Savings and Trust Company et al. are the defendants.

F. P. B. SANDS,
Examiner in Chancery.

Met pursuant to understanding between counsel and notice to examiner, at 12 m. this 25th day of June, A. D. 1875, to take depositions for defendants.

Present, J. G. Bigelow, of counsel for complainants, and Geo. W. Stickney, who came as witness for defence.

At 1 m., counsel for defendants not appearing, the taking of depositions for the defendants adjourned until 10 a. m., Monday, 28 inst., at 490 La. ave.

F. P. B. SANDS,
Examiner in Chancery.

Met pursuant to last adjournment at 10 a. m., this 28th June, A. D. 1875.

Present, J. G. Bigelow, of counsel for compl's; A. C. Bradley, esq., for def'ts'.

Whereupon the depositions on behalf of the defendants were begun.

95 *Deposition of John W. Smith.*

JOHN W. SMITH, a witness of lawful age, being duly sworn, deposes and says as follows:

By the examiner:

Q. Mr. Smith, give your full name.

A. John Wesley Smith.

Q. State your residence and occupation.

A. I reside at No. 926 Mass. ave., and my occupation, lawyer.

Q. Are you acquainted with the parties to this suit?

A. I don't think I know Mr. Clark; I know some of the officers who are connected with the Freedman's Savings and Trust Company.

By Mr. Bradley:

Q. Mr. Smith, state whether you were present at a sale of certain property known as house No. 615 E street, on the first of July, 1872.

A. I was at an auction there about that time. I suppose it was that one.

Q. State what you went there for.

A. To buy, if I got a good bargain.

Q. Please state how that sale was attended, as to the number of persons present.

A. I think there were about twenty-five persons present.

Q. Did you make any efforts at all to purchase at that sale? if so, state to what extent you bid.

A. I made one or two bids, I don't know how much; I am uncertain about the exact amount I bid, but it was between twelve or thirteen thousand dollars, I think twelve thousand five hundred dollars ($12,500.00).

A. Did you know Mr. Stickney or General Eaton at that time?

A. Yes, sir, I knew both—I knew General Eaton; I am not sure whether I knew Mr. Stickney or not, but I think I did. I have known General Eaton longer than I have Mr. Stickney.

Q. Do you know who this property was bid in by?

A. I do not.

Q. Were any inducements held out to you at all to bid upon the property—to go higher than you had? if so, state what.

96 A. Well I don't know that there were any inducements. Mr. Warner, after I had bid as high as I did, came to me and said that if I would bid thirteen thousand dollars that he was pretty sure it would be knocked off to me; that about that much was needed to pay the loan and expenses.

Cross-examined by Mr. Bigelow:

Q. Mr. Smith, will you please state who else besides yourself bid upon that property?

A. Indeed, I do not know.

Q. You do not remember any one?

A. No, sir.

Q. Don't you remember upon whose bid the property was knocked down?

A. I do not. I had an impression that it went to some party connected with the bank.

Q. Do you remember of seeing Col. Eaton there?

A. I don't remember who it was. There was some officer or party

whom I supposed represented the bank, but whether it was Eaton or Stickney I cannot say.

Q. Don't you remember seeing Alvord?

A. As I said, I don't remember which one it was. I simply remember there was a buggy up there with some men connected with the bank in it.

Q. State whether you remember how the sale terminated, whether it was by formal knocking down of the property.

A. I have tried to think of that, but I can't state. After I bid as high as I determined to go, I paid little attention to it.

JOHN WESLEY SMITH.

Subscribed and sworn to before me this 9th day of July, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Adjourned to meet on notice to counsel.

Deposition of George W. Stickney.

GEORGE W. STICKNEY sworn and examined.

Commissioner:

Q. Give your full name.

A. George W. Stickney.

97 Q. Your occupation?

A. Real estate agent.

Q. Your residence?

A. I reside at No. 1323, Eleventh street.

Mr. Bradley:

Q. Do you know any of the parties to this suit?

A. I know them all, I think, except Mr. Clark.

Q. What was your occupation about the first of July, 1872?

A. I was assistant actuary of the Freedman's Savings and Trust Company.

Q. State whether you attended a sale of certain property known as house No. 915 E street, made by Col. Eaton on the first of July, 1872.

A. I did.

Q. Who did you go with and how?

A. I took Col. Eaton in my buggy to the sale.

Q. State, if you remember, as to the number of persons attending the sale.

A. Well, there were about twenty—somewhere near that number.

Q. State whether there were any bids.

A. There were two or three bidders there besides myself.

Q. Did Col. Eaton bid?

A. He did not.

Q. Where were you and Col. Eaton during this sale?

A. I staid in the buggy; Col. Eaton got on the sidewalk.

Q. Upon whose bid was the property struck off?

A. Upon my bid for the bank.

Q. State whether, if you remember, the property was knocked down to the bank or not.

A. It was.

Q. I suppose you have attended trustees' sales before, and know as to whether it was regularly done?

A. It was. The sale was going on for at least half an hour.

Q. Was there any hurry to your knowledge in getting through the sale?

A. No, sir; I think not.

Q. State whether you had anything to do with the sale of that property to me.

A. I did.

98 Q. Do you remember whether any cash payment was made at the time of the purchase? If so, state how much.

A. There was a cash payment of fifteen hundred dollars (1,500.00) made.

Q. State whether there was any delay in the exchange of papers; and if so, what was the cause of that delay?

A. There was a delay of a few days in getting the vote of the board of trustees, authorizing the president and actuary to sign a deed of the property.

Q. Was there not also a delay caused by the necessity for an acceptance of the offer of A. C. Bradley to purchase instead of the offer which had been made and accepted from Mr. Warner?

A. I think not; the finance committee first approved of the offer of Mr. Bradley, and then we had to wait for the meeting of the board of trustees in order to have them authorize us to sign the deed.

Q. Mr. Stickney, there seems to be some disparity between the dates of the deed from the Freedman's Bank to A. C. Bradley and the deed of trust from A. C. Bradley, given to secure the deferred payments; please state what is your *your* recollection as to the exchange of papers.

A. My recollection is I passed you the deed of conveyance the same time you handed me the deed of trust and notes for $17,000.00 and $1,500.00 in cash.

Q. Do you remember whether or not the deed from Loney and wife to you was passed to me at that time?

A. I have no remembrance.

Q. Was it or was it not a part of the consideration of purchase that a deed from Loney and wife to me should be given?

A. It was.

Q. What was the bid upon which this property was struck off to you?

A. $13,000.00.

Q. Do you remember hearing any statement made by the auctioneer or crier to the effect that the property could not be sold at that figure, because something must be left for the family?

A. No, sir.

Q. What was your occupation at that time that this loan was made to Francis McGhan?

A. I was assistant actuary of the Freedman's Savings and Trust Company.

99 Q. Please state what you know in relation to making of that loan, by whom it was made and how.

A. The application was made to the bank and referred to the finance committee, and they approved the loan, and then it was referred to the attorney of the bank, Mr. Steward, who prepared the papers, and the loan was made.

Q. What was Col. Eaton's position in the bank?

A. He was actuary of the bank.

Q. To whom was he subordinate?

A. To the finance committee and the board of trustees.

Q. Who was the principal officer of the bank?

A. The president was.

Q. Was Col. Eaton a salaried officer of the bank?

A. He was.

Q. What was the custom of the bank as to the parties who were made trustees, when loans were made by that institution?

A. Generally some of the officers of the bank were made trustees. Sometimes Col. Eaton, somtimes others.

Q. What was your purpose in acting for the bank in bidding upon this property?

A. To protect the interests of the bank. If anybody bid enough to cover the amount due the bank they could have had the property.

Q. So far as you know, was there any purpose, with the officers of the bank, of speculating in that property?

A. There was not; I always offered the property to anybody who would give the amount of the bank's claim.

Q. Did Mr. Flaesch ever offer to purchase that property?

A. I don't know the gentleman at all. I know nobody ever made an offer to purchase the property.

Q. Did he or not make an offer, and you, as the price, ask $22,000.00?

A. I have no recollection. There was a man owning two houses on D street who wanted to trade; he may be the man; I don't know who he was.

Q. After the purchase of this property by the bank, was it offered for sale by any one; if so, did any agent have charge of it for the purpose?

A. Mr. Warner had charge of it. Then I asked several parties to sell it for us for enough to clear the bank.

A. How long after the sale was it that you obtained possession of it?

100 A. Somewhere between six and seven months.

Q. How did you obtain it?

A. By putting the parties out of the house.

Q. By legal process?

A. Yes, sir.

Q. Look at the statement of the account annexed to the answer of the Freedman's Bank and state what you know in relation to it.

A. This is statement of the sale, of the expenses of the bank made up by me; I took it from the books of the bank.

Q. State what you know as to the correctness of the items.

A. They are correct to the best of my knowledge and belief.

By Mr. Totten:

Q. Did you actually pay out this money or any of it?

A. I paid out the whole of it, with the exception of the loan and interest accruing upon that.

Q. I mean the items for insurance, advertising, taxes, repairs, &c.?

A. I did.

Q. Was there any other item that you have not charged in this bill?

A. None that I know of. The large amount for advertising comes from the postponement of the sale for three months at the request of Mrs. and Mr. McGhan made in writing, asking us to postpone it for two or three weeks.

Q. Who paid Loney $800.00 for fee?

A. The Freedman's Bank, I think.

Q. Did you pay the money yourself, or did some other one upon your order?

A. I don't remember as to that.

Q. You know the bank paid it?

A. Yes, sir.

Cross-examined by Mr. Bigelow:

Q. What is your age, Mr. Stickney?

A. About thirty-one.

Q. At the time this sale was made your hair was not gray, was it?

A. No, sir; I was of legal age.

Q. Did you have any beard at all?

A. The same as I have now.

101 Q. What relation existed between you and D. L. Eaton in his lifetime, in the latter years of his life?

A. He was my uncle.

Q. Did you say you rode there together in your buggy?

A. Yes, sir.

Q. Where did Col. Eaton enter the carriage with you, at what point?

A. In front of his house, near Howard University.

Q. Where did you then live?

A. No. 1324 Eleventh street.

Q. Where did you keep your horse and carriage?

A. At Fowler's on 12th street.

Q. What color was that horse?

A. Sorrel, I think.

Q. What kind of buggy was it?

A. A phæton, a sort of doctor's buggy.

Q. Whereabouts did you enter E street?

A. At Seventh or Eighth, I don't remember which.

Q. Which way was your horse facing at the time of and during the sale?

A. West, if I remember rightly.

Q. Whereabouts did you stop, as to the house; was it directly in front?

A. The horse's head was directly front of the house?

Q. Was the top of the buggy turned back?

A. I think it was.

Q. What were you talking about on your way to the sale?

A. I don't know.

Q. Anything said about the sale?

A. I have no remembrance.

Q. How many loans did the Freedman's Savings and Trust Company make on real estate in the city of Washington?

A. They made about fifteen hundred.

Q. About how many of those have been foreclosed?

A. Thirty or forty.

Q. Have you attended the sales?

A. I think I have, most of them; either as trustee or officer of the bank, to protect the bank,

Q. Have you attended many sales wherein Col. Eaton has been trustee?

A. Don't remember of ever attending but two.

Q. Can you state who bid the property in at those sales?

102 A. I bid it in in this one.

Q. But the other two?

A. This was one of them, and the other was sold to Frank Smith.

Q. Who was president of the bank at the time of this sale?

A. John W. Alvord.

Q. What was his business before he become the president of the bank?

A. He was superintendent of schools for the Freedman's Bureau?

Q. What had been his occupation?
A. He was a minister, was connected with a tract society, &c.
Q. Did he take a very active part in the management of the affairs of this bank?
A. Yes, sir, he did at this time; he had just began to take an active part at the time of this sale.
Q. Who bid upon the property besides yourself?
A. John W. Smith and one or two other gentlemen whose names I don't know.
Q. Can you describe them as to their appearance?
A. I cannot.
Q. Are you certain there were two others besides Smith and yourself?
A. I think there were two.
Q. Do you remember the amount Smith bid?
A. My remembrance is that he bid $12,800.00, although he said it was $12,500. I am sure some one bid $12,800.
Q. Can you state the names of any persons who attended this sale?
A. I can.
Q. Do you know Jesse B. Wilson?
A. I know him now, I didn't then.
Q. Do you know Robert Boyd?
A. I do not.
Q. Where did you say Col. Eaton was during the sale?
A. I think in the buggy most all the time.
Q. Were you in the buggy yourself?
A. I was, either one of us was in the buggy all the time.
Q. Do you know how the bid was made, whether by announcing the amount of the bid or by nodding the head?
A. I don't remember.
103 Q. Do you know whether it was formally knocked down upon your bid?
A. It was.
Q. Was you name announced at the time?
A. It was announced as sold to the Freedman's Savings and Trust Company.
Q. How long did this sale continue?
A. A half or three-quarters of an hour.
Q. Who was the crier on that occasion?
A. E. J. Sweet.
Q. Did you see Mrs. McGhan upon that day?
A. I don't know.
Q. Did you ever see her before?
A. I think I saw her at the bank once.
Q. When you made a loan on this property in 1870, who appraised it?
A. I don't know—I think Kilbourn & Latta.
Q. What was it appraised at?
A. $20,000.
Q. Is that appraisement recorded in any book of the company?
A. I could not tell you—I think it is.
Q. Do you have a book for that purpose?
A. Yes, sir.
Q. State the duties of the actuary of the Freedman's Bank?
A. The same as the cashier of any bank.
Q. Subject to the by-laws of the bank?
A. The same as the cashier in any bank, yes, sir.
Q. Then he is the principal business man of the bank?

A. Yes, sir; though the only officer known upon the charter is the president.

Q. Do you remember when Mr. Warner made his proposition to purchase?

A. Yes, sir.

Q. What date was it?

A. I don't remember the date—some time in the month of May, 1873?

Q. How was it made?

A. Made in writing, addressed to myself or Alvord, the president.

Q. Did you reply to it?

A. I told Mr. Warner I would put it before the finance committee.

104 Q. About what date was this?

A. About the last of May or the first of June, 1873.

Q. Had he at that time made a proposition to rent the property to the government?

A. I have no knowledge.

Q. If he had made such a proposition you did not know it at the time?

A. No, sir.

Q. If you had been aware that this property could have been rented to the government for $4,200 per year for the use of the Post Office Department, would you have accepted his proposition to have purchased?

A. I don't know—I didn't have the acceptance.

Q. What time was his proposition formally accepted?

A. Formally accepted by the finance committee some time in the first of June.

Q. What had the finance committee to do with the acceptance of this proposition?

A. It was left to them to recommend whether it should be accepted.

Q. Was there any power to accept such a proposition under the by-laws of the corporation?

A. There was; I think the vote of the board of trustees authorized the finance committee and the president to sell this property, or to accept any offers for it that would clear the bank.

Q. Why did the board of trustees in their regular meeting held June 12, 1873, pass a resolution accepting the offer of A. C. Bradley?

A. Because it was necessary in order to make a good conveyance to Mr. Bradley and to show it was sold?

Q. Is there any record of the proceedings had with the finance committee on this proposition?

A. I think so.

(Objected to by Col. Totten, counsel for the Freedman's Bank.)

Q. Don't the by-laws require the finance committee to keep a record of their proceedings?

A. It does.

(Objected to by Col. Totten.)

Q. At the time the Post-Office Department took possession of this propery were you aware of it?

A. I knew it after the offer had been accepted that it had been rented to the Post Office Department.

105 Q. When was this offer made?

A. I told you I don't remember the exact time; it is a matter of record—I think it should be.

Q. Who composed the finance committee at that time?

A. Moses Kelley, John M. Langston, L. R. Tuttle, George W. Ballock, and Z. Richards, I think.
Q. How many members of the finance committee are there?
A. Five.
Q. How many members of the trustees constitute a qurorum?
A. Nine.
Q. Can you give the names of the trustees?
A. I cannot.
Q. Was the actuary of the Freedman's Bank also secretary to the trustees?
A. He was.
Q. Did he record their proceedings?
A. He ought to have.
Q. That was part of his duty?
A. Yes, sir.
Q. Were you present at the meeting of the trustees June 12, 1873?
A. I think I was.
Q. Did you lay this proposition to purchase before them?
A. I did.
Q. Are you certain that before that there was no proposition or acceptance to purchase?
A. I am.
Q. When was Col. Eaton made the actuary of this bank?
A. On the 1st of May, 1867.
Q. What was his salary?
A. $3,000—at that time.
Q. Was it subsequently increased?
A. It was.
Q. To what amount?
A. To $4,500, and reduced to $4,000.
Q. Was it reduced during his term of service?
A. It was.
Q. When were you appointed assistant actuary?
A. July, 1869.
Q. What was your salary at the time of this sale?
106 A. $2,000.
Q. What was your duty?
A. A little of everything.
Q. Well, in this matter?
A. I had charge of things generally, with Col. Eaton.
Q. Did you perform the duties of actuary?
A. I did.
Q. When he was present, were you his assistant?
A. Of course I was.
Q. Subject to his order and control?
A. Yes, sir.
Q. Who made the calculation as to the amount of indebtedness due from McGhan at the time of the sale?
A. I think I did.
Q. Did Col. Eaton assist you?
A. No, sir.
Q. Did you report to him the amount?
A. I think he knew the amount it would take to clear the property?
Q. Do you know how he ascertained it?
A. I have no remembrance now.
Q. Did he say anything about buying the property in?

A. It was always our custom to buy the property when there was not enough bid to cover the amount of loan.

Q. Did you go there for that purpose?

A. I went there for that purpose, if there was not enough bid to clear the bank.

Q. Did you receive any instructions in the premises?

A. I don't think I did.

Q. Were you not aware that there was no seal attached to the deed of trust?

A. I was not.

Q. When was your attention first called to the fact?

A. By Mr. J. G. Bigelow, five or six months ago.

Q. Did you ever have any conversation with Mr. Shepherd relative to the purchase of this property?

A. I did not.

Q. Do you know whether he had any communication with the finance committee or the board of trustees?

A. I do not.

Q. Or with any individual member?

A. I do not.

Q. As the actuary of the bank you gave this informal acceptance or assurance that his proposition would be accepted?

107 A. I did.

Q. And the bank confirmed your action?

A. They confirmed the action of the finance committee?

Q. How and when were these entries made in the books of the bank?

A. Made on the dates as they appear here.

Q. State why the deed of Eaton to the Freedman's Bank was not put upon record until seven months after the date.

A. I think Col. Eaton was sick and went away immediately after the sale, and didn't return and was not able to transact business.

Q. How much was the amount of this loan?

A. $10,000.

Q. When was it made?

A. 1870.

Q. What does that mean—less $100?

A. I think $100 was paid on account of interest.

Q. How much interest was paid by McGhan prior to the sale?

A. $1,100.

Q. How much interest was due at the date of sale?

A. About $900.

Q. How much is down here in this account?

A. $1,927; this amount is not taken from the books.

Q. Then that second item is incorrect?

A. No, sir, it is not; it is correct.

Q. How do you make it?

A. Interest on the loan up to the time we sold the property.

Q. When was it sold?

A. June, 1873.

Q. Take the next item—to whom was that paid?

A. It was paid for insurance on the house.

Q. Do you know what company you were insured in?

A. No, sir.

Q. Have you any record to show?

A. I have not at present.

Q. How was that amount paid?

A. Either by money or check.
Q. Do you remember how that is entered in the book?
A. Just as it appears here.
Q. The next item?
108 A. Advertising and auctioneer's expenses, $736.75.
Q. How was that paid?
A. Paid by check or in cash.
Q. How much for advertising?
A. $588.75, I think.
Q. How do you get that?
A. Deduct the legal fees of the auctioneer.
Q. What are the legal fees of the auctioneer?
A. $148.
Q. How do you get at that?
A. Five per cent. on the first two hundred; two per cent. on the one thousand, and one per cent. on the balance.
Q. Do you know in what papers this property was advertised for sale?
A. In the Star and Republican.
Q. Have you no vouchers for these items?
A. You will have to ask the officers of the bank for them; I am not an officer of the bank now.
Q. Can't you get access to them?
A. I think not.
Q. Your next item?
A. $650, trustee's commissions.
Q. How did you get at this?
A. Five per cent.
Q. Did you pay that?
A. I did.
Q. To whom?
A. Col. Eaton.
Q. Have you his receipt for it?
A. I think not, at present.
Q. The next item is for taxes, how much is that?
A. $1,216.50.
Q. What are these taxes for?
A. Taxes due on the property.
Q. All general taxes?
A. Yes, sir.
Q. No special taxes?
A. None that I know of.
Q. How was that paid?
A. By check.
Q. Have you the tax bills?
A. They are at the bank.
Q. The next item is for marshal's fees.
A. I tried to get the parties out of the house.
109 Q. How much is it?
A. $6.00.
Q. The next item, repairs on the property, $3,00. Who made these repairs?
A. I don't remember.
Q. What did they consist of?
A. I don't know.
Q. Have you the bills?

A. They are at the bank.
Q. Ground rents, to whom did you pay them?
A. W. F. Mattingly.
Q. How much is it?
A. $229.80.
Q. For what purpose?
A. He was the agent of Loney.
Q. The next item, justice's fees. How much is that?
A. $14.40.
Q. What justice?
A. Plant.
Q. Who was plaintiff in this cause?
A. The Freedman's Savings and Trust Company.
Q. Who was defendant?
A. Francis McGhan.
Q. In whose favor was the judgment rendered?
Objected to by Mr. Bradley because it is a matter of record.
Q. Are you not aware that this cause was adjudged against the bank?
A. I am not.
Q. The next item, insurance premium, what is the amount?
A. $22.50.
Q. To what company was it paid?
A. I don't know.
Q. What is the next item?
A. Constable's fees.
Q. What is it?
A. $3.50.
Q. What constable was it?
A. I don't know.
Q. What was it for?
A. I don't know.
Q. How do you know it was paid?
A. I have receipts for all these items filed with the bank papers.
110 Q. Are those receipts and vouchers accessible to you?
A. They are not.
Q. Stamps and recording, what is that for?
A. Stamps on the deed of conveyance to the bank, &c.
Q. Don't the deed of trust state that expenses shall be at the cost of the purchaser?
A. Certainly it does.
Objected to by Mr. Bradley, as to what is stated in deed of trust.
Q. The next item, repair?
A. $2,200.
Q. To whom was it paid?
A. Robert J. Flemings.
Q. The whole of it?
A. It was.
Q. How did you pay him?
A. I paid him money I suppose.
Q. Take his receipt for it?
A. Yes, sir; that is filed with the other papers.
Q. Does the receipt cover the exact amount you paid him?
A. It does.
Q. No rebate on account of commissions?
A. No, sir.
Q. Did you have an itemized bill?

A. I don't remember.
Q. Can't you tell of your own knowledge what these items were?
A. He agreed to repair the house for $2,200. That was the lowest bid we received.
Q. Did you advertise?
A. We did not.
Q. Who bid besides him?
A. I don't remember.
Q. How did you receive bids if you did not advertise?
A. We asked parties for them.
Q. Special improvement taxes, how much were those?
A. $151.13.
Q. Got a receipt for that?
A. I have, filed with the other papers.
Q. How was that paid?
A. By check or cash.
Q. You are sure it was not paid with certificates?
A. I am.
111 Q. There is one item above, additional insurance premium, $2.00. Did you pay that?
A. I did.
Q. Do you know to whom?
A. I do not.
Q. The amount paid Loney for fee, $800. Did you pay it?
A I did.
Q. How did you pay that?
A. I don't remember.
Q. Was that for naked fee?
A. It was.
Q. How much was he entitled to receive?
A. This amount I suppose.
Q. No ground rent embraced in that?
A. I don't remember.
Q. To whom was this conveyance made by Loney?
A. Made to A. C. Bradley.
Q. Was that amount embraced in the $18,500 he proposed to give for the property?
A. It was.
Q. Did the bank pay it?
A. They did.
Q. When were you made actuary of the bank?
A. In August 1st, 1873.
Q. How long did you continue to be actuary of the bank?
A. Until the 1st of July, 1874.
Q. What is the amount, or what was the largest amount of money the Freedman's Savings and Trust Company had on real estate at any one time in the city of Washington?
(Objected to by Col. Totten as irrelevant.)
A. About $2,000,000.
Q. Can you give an approximate amount Mr. Warner loaned of that sum as your agent?
A. He was never the agent of the bank.
Q. Through whom was it generally loaned?
A. Anybody that came and made a good application.
Q. Do you mean to say the loans were made directly by the bank officers?

A. They were, through the finance committee.

Q. Who were the principal men in making these loans?

A. Some time in 1871 there was a resolution forbidding the officers or the finance committee making any loans to real estate agents, and very few loans were made after that.

112 Q. Was there ever any loans made by the bank without the action of the finance committee?

A. Yes, sir.

Q. In such cases who made the loans?

(Objected to by Col. Totten.)

A. The actuary and president.

Redirect examination by Col. Totten.

Q. What kind of a man was Col. Eaton?

A. He was a small man with thin whiskers.

Q. Was his hair white?

A. It was not. He had no chin whiskers.

GEORGE W. STICKNEY.

Subscribed and sworn to before me, this 21st day of July, A. D., 1875.

F. P. B. SANDS,
Examiner in Chancery.

Deposition of A. C. Bradley.

A. C. BRADLEY, sworn according to law, deposes and says:

By the examiner.

Q. Mr. Bradley, please state your residence, occupation and whether you know the parties to this suit?

A. I am a resident of the city of Washington, and by profession a lawyer, and a member of the bar of the supreme court of the District of Columbia. I am one of the parties to this suit. I am one of the defendants. Some time in May or June. 1873, I was acting as the attorney of Mr. Shepherd in various matters. I was called upon by Mr. B. H. Warner, who stated to me that Mr. Shepherd desired to see me. At that time I think Mr. Warner represented to me that he had agreed with the Freedman's Savings and Trust Company to purchase of it a certain piece of land lying in the city of Washington, described in the bill of complaint, and better as house No. 915 E street, N. W., and that since his arrangement had been made with the F. S. and T. Co. for the purchase of this property he had requested Mr. Alexander R. Shepherd to take the matter off his hands, and that Mr. Shepherd had consented to do so,

113 and desired to see me about the matter.

I went to see him, and he substantiated the statement made by Mr. Warner, and requested me to take charge of the matter and see that the papers were properly drawn up, and to have the property conveyed directly to me, to be so held by me in my name until he desired me to convey it to him. I made all the arrangement with the F. S. and T. Co. for the purchase of the property and was informed at the time that the title they held was only a leasehold, and that the fee simple was in certain parties residing in Baltimore; that they had agreed to convey a good title, and they were then making or had made arrangements with the party in Baltimore for the purchase of the fee simple. I made an offer to purchase from the bank this property upon the same terms, as I understood then, as these offered by Mr. Warner. It was some time before a regular meeting of the board of trustees could be

held, the matter properly acted upon, and the offer accepted. Before the deed of conveyance to me from the bank was executed, I think I gave the deed of trust to secure the deferred payments, and, I think, received the deed from the bank of Henry D. Loney and wife (I think the papers were exchanged at the same time), conveying to me the fee simple of the property. When I passed to the bank the notes secured by the deed of trust, I made a cash payment of $1,500.00 on account of this purchase, this money having been given to me by Mr. Shepherd for that purpose. At that time I believe I consulted with Mr. Mattingly, he having been referred to by Mr. Stickney as the attorney who had had some connection with the acquiring of this title by the bank, and was informed by him that the outstanding title was in this party in Baltimore, and that upon the conveyance by Henry D. Loney and wife to me and the conveyance by the bank of the title held by it I would be in possession of a good title. This is my impression. The difference in the dates of the respective deeds forming a part of this transaction is accounted for by the facts before related, Henry D. Loney and wife living in Baltimore, and the necessity of my offer to purchase being substituted for that which had been made by Mr. Warner and accepted by the bank, and the delay consequent and attendant upon the legal acceptance of this proposition. Mr. Shepherd was not known to the bank in the transaction at all. I acted in the transaction as the
114 purchaser, and gave my individual notes for the deferred payments, and all notices of accruing interest upon these notes have been sent to me, and, as well, notices of the maturity of the notes which have respectively become due. Mr. Shepherd assumed with me to pay all the deferred payments, but, so far as I know, has never been known to the bank. I was not aware at the time of the purchase, so far as I remember, and not until some time thereafter, as to how or from whom the Freedman's Savings and Trust Company acquired this property, except that I understood that it was property purchased by them at a sale under a deed of trust made to secure them for a loan to the owner of the property. I didn't examine the title to the property, as that was not part of my duty; my only office in the matter was to see that this transaction was properly conducted, and that all papers connected therewith were properly executed, and that the property should be conveyed directly to me. Subsequently, as set forth in the bill of complaint, upon Mr. Shepherd's request, I conveyed the property to him. I was not aware of any informality in any of the acts by which the Freedman's Bank acquired the title to this property, and never received the slightest notice or the slightest intimation that there were any informalities connected therewith, or that any outside party, Mrs. McGhan, or any one else, had any equities or pretended to have any claim against the property purchased. The notes which have matured, given for the deferred payments, so far as they have been paid, have been paid by Mr. Shepherd, and the accruing interest which has been paid, has been paid by Mr. Shepherd. And all collections on account of rent, made by me, have been duly turned over to him. In this whole transaction, so far as I know, I am sure that Mr. Shepherd acted with perfect good faith, without any greater knowledge than I had, and my whole connection therewith was perfectly bona fide. That the first notice I had that Mrs. McGhan claimed to have any equities as against this title held by the Freedman's Bank, or pretended to have any claim as against the title of Mr. Shepherd in any manner, shape, or form, was when notice was received a few days before this bill was filed that something

of the kind was about to be done; this notice was given to me, I think, by Mr. Stickney.

115 Before the purchase had been effected by me with the bank I was informed by Mr. Warner that he had secured the assent of the Post Office Department to a proposition to lease the property to it, and, as I understood, Mr. Warner was then acting in his own behalf, and for his own interest, and after Mr. Shepherd consented to take the purchase of the property from his hands, Mr. Warner went with me to the Post Office Department, I think a few days before the papers were duly executed, but, after the assurance was received that my proposition to purchase from the bank was accepted, and I then, as the owner of the property, knowing that the papers would be duly executed and in my hands within a few days, executed a lease of the property to the Post Office Department, which has been duly set up in the bill of complaint.

Adjourned to Wednesday, June 30, 1875.

WEDNESDAY, *June* 30, 1875—11 a. m.

Met pursuant to adjournment.

Present, counsel for parties, Messrs. Bradley and Bigelow.

Whereupon cross-examination of Mr. Bradley was begun by Mr. Bigelow.

Q. To whom and when did Mr. Warner make a proposition to buy this property?

A. That is something about which I have no personal knowledge.

Q. Do you know whether the proposition was in writing?

A. I do not. I believe it was, and I believe it was accepted.

Q. Do you know by whom it was accepted?

A. I have no personal knowledge upon the subject.

Q. Do you know whether the acceptance was in writing?

A. The same answer.

Q. To whom and when did Mr. Warner offer to rent this property for the use of the Post Office Department?

A. That is a matter of record, and is shown in the official records of the Post Office Department.

Q. What do you mean by "it is shown in the records of the Post Office Department?"

A. I mean to say the papers are there. There were sundry offers and Mr. Warner's was among the others.

116 Q. Do you know for what amount he offered to rent the property?

A. It is matter of record.

Q. Will you be kind enough to get a copy of the record?

A. The counsel for the plaintiffs in this case seem to have had such peculiar facilities, I think it would, perhaps, be easier for them to procure it for themselves.

Q. Do you not know that it was on the 22d day of May, 1873, that Mr. Warner offered to rent this property for the sum of four hundred dollars ($400.00) per month?

A. I have no knowledge about Mr. Warner's transactions with the Post Office Department prior to the time when I was instructed to act in the transaction for Mr. Shepherd.

Q. Do you know whether his proposition to rent this property to the Government was accepted?

A. I have no personal knowledge upon the subject.

Q. Had Mr. Warner seen Mr. Shepherd before he made this proposition?

A. I have no personal knowledge upon the subject.

Q. Do you know when he saw Mr. Shepherd about this subject matter?

A. I do not, except that Mr. Warner told me that he had seen Mr. Shepherd and asked him to take the matter off his hands.

Q. When did he make that statement?

A. I think when I first saw him, the latter part of May or the first of June.

Q. Did you call immediately thereafter upon Mr. Shepherd?

A. I believe I did.

Q. What took place at that first interview, between you and Mr. Shepherd?

A. That is a matter that I don't consider affects this case at all. It is a matter between attorney and client. I have no objection to its being known, if Mr. Shepherd has not. I don't believe he has, and I suppose when he is put upon the stand he will tell you all you want to know.

Q. Do you decline to give an account of this interview on the ground that you were his attorney?

A. I have already stated why I didn't care to answer.

Q. What did you next do after this interview with Shepherd?

117 A. I have no written memoranda of times and circumstances, and of course cannot be accurate, but I think that the first thing that I did was to see the officers (I believe Mr. Stickney) of the Freedman's Bank in relation to making this purchase of them.

Q. In this interview with Mr. Shepherd, did you enter into a written agreement with him, whereby you became obligated to convey this property to him upon his request?

A. I have already stated that I agreed to convey this property to Mr. Shepherd upon his request.

Q. Was that agreement in writing?

A. There was a written agreement.

Q. Will you produce it?

A. I haven't it.

Q. Whereabouts is it?

A. I don't know—I suppose Mr. Shepherd has it.

Q. For what purpose did Mr. Shepherd desire you to take the title of this property to yourself?

A. That is a matter which Mr. Shepherd communicated to me as his attorney, and does not affect this case in any manner whatsoever, and being a matter between attorney and client is not proper to be inquired into, and unless authorized to make such a statement, I do not feel authorized to give any information. I can say, however, that it was nothing that could not with perfect propriety, except as I have stated, be known to every one.

Q. Were you acting in the capacity as his attorney or agent at that time?

A. I had been acting as his attorney in a great many matters, and so acted in that matter.

Q. When did you make your proposition to purchase from the Freedman's Bank?

A. Shortly after I saw Mr. Warner—I have forgotten how soon.

Q. To whom did you make that proposition?

A. I presume to the officers of that institution. I have forgotten.

Q. Was that proposition in writing?

A. I think it was. It may have been that Mr. Warner obtained a substitution of my proposition for his; I don't recollect; however, the papers of that institution will show.

Q. You have not a copy of it?

A. I have not, so far as I recollect; I may have, I will look.

118 Q. By whom was this proposition acted upon first?

A. That I cannot say.

Q. In what manner was the acceptance conveyed to you, and when?

A. I have forgotten.

Q. You can't say whether it was in writing or not?

A. I cannot; I presume it was.

Q. Can you give the date of it?

A. I cannot. It was before any papers were passed between us.

Q. How much did you propose to pay for the property?

A. $18,500.00, I believe.

Q. How much cash down?

A. $1,500.

Q. The balance to be paid how?

A. According to the terms set forth in the deed of trust.

Q. To whom did you make the proposition to rent this property for the use of the Post-Office Department?

A. The proposition was made by Mr. Warner, I suppose, to the Postmaster General, though as to that matter I have no personal knowledge, and that proposition I understood had been accepted at the *the* time that I first took part in the transaction, and when I went there, I went with Mr. Warner and was introduced to the Postmaster General as the party owning the property.

Q. When was this introduction?

A. I think it was the day the lease was executed. The date I don't remember.

Q. How did you arrive at the fact that the rent should be four thousand two hundred dollars ($4,200.00) per annum?

A. I didn't arrive at it at all; the matter had all been negotiated before I had anything to do with it.

Q. Who wrote that lease?

A. It was written by some officer of the government.

Q. Did you ever have an interview with A. B. Mullet with reference to the renting of this property?

A. I never have.

Q. Do you know whether Mr. Shepherd ever had?

A. I do not.

Q. Do you know whether Mr. Warner ever had?

A. I don't know anything about it.

Q. Do you know what part Mr. Mullet took in the renting of this property?

119 A. I don't, except what I have seen from the records, that this property was, as I remember it, favorably reported upon by a committee and by Mr. Mullet, but whether he was a member of that committee I don't remember, but I had seen his signature or his name printed in the paper submitted to the committee of Congress in connection with the matter, but exactly how I have forgotten.

Q. You say Mr. Shepherd was not known to the Freedman's Bank in this transaction?

A. That is my knowledge; not so far as I know.

Q. You would not say that he didn't have some transactions with the Freedman's Bank upon the subject matter?

A. I don't believe he had.

Q. Who constituted the finance committee of the Freedman's Bank about that time?

A. That I know nothing about.

Q. Do you know that Lewis Clephane was one of them?

A. I do not.

Q. If you refer to the deed of the bank to you, you will see your proposition to purchase was accepted on the 12th of June, 1873. Now state what sort of an acceptance, if any, there was had before this formal acceptance?

A. As I have stated before, I don't remember.

Q. And don't remember from whom its acceptance came?

A. It has been so long ago that I have forgotten.

Q. State as fully and as concisely as you can, what contract had been made for the conveyance of this property to you on June 6, 1873, the date on which you executed the lease of this property to the Post-Office Department.

A. That I don't remember, except that I understood fully that Mr. Warner had agreed to purchase this property, and that I was substituted in his stead as the purchaser, and that if the formalities of the offer and acceptance had not at that time been made, or done, they certainly would be, and I was also fully aware of the fact that if I didn't afterwards acquire the title to it my lease would be of no effect.

Q. Did the Freedman's Bank know on the 9th of June, 1873, the date on which you executed the deed of trust, that the Post Office-Department was then in possession of the building, paying $4,200 rent for it?

120 A. I have no knowledge of the knowledge of the Freedman's Bank.

Q. How came the Freedmants Bank on this last-named day to take from you and your wife a deed of trust upon this property to secure $17,000, while yet the title was resting in the Freedman's Bank?

A. As I have already stated, although the deed and deed of trust may bear different dates, my recollection is that we exchanged papers at the same time.

Q. Do you remember the date of the notes?

A. It is shown in the deed of trust.

Q. They are dated on the 9th of June, 1873; how do you remember the date of the conveyance of Loney and wife to you?

A. That is shown in the deed.

Q. Have you got the deed there?

A. No.

Q. Was that subsequent to the execution and acknowledgment of this deed of trust?

A. I don't remember; I believe that I received the deed, however, some days subsequent to the exchange of the papers.

Q. What evidence of title passed to you simultaneously to you delivering these notes and deed of trust to the Freedman's Bank?

A. The deed from the Freedman's Bank passed to me, and it was understood between us that this deed from Loney and wife if it was delivered at time, as to which I don't remember, would be delivered in a few days, that the matter had been negotiated so that a perfect title would pass to me.

Q. But the deed of the bank to you is dated June 16, 1873; do you mean that you held on to the deed of trust and notes until that date?

A. I do, until we exchanged papers; whether we exchanged papers on

the 16th of June, I don't remember; I delivered to the bank the deed of trust at the time the deed was delivered to me from the bank.

Q. And made the payment of fifteen hundred dollars?

A. Yes, sir.

Q. Do you know how much has been paid towards the purchase-money, except the $1,500.00?

121 A. I have no personal knowledge; I think the first note had been paid, the one that matured last year, and that all accruing interest which was to be paid semi-annually was paid. The last note which matured this month I think has not been paid; I was so informed.

Q. About how much in the aggregate has been paid on this purchase money?

A. I don't know. Mr. Shepherd can show that. It is shown in the pleading, though, I think.

Q. How much has he received on account of rents?

A. To that I can only give the answer I gave to the preceding question.

Q. They are largely in excess of the amount that has been paid, are they not?

A. I have never calculated or estimated it.

Q. Now, will you be kind enough to state why, if this transaction on the part of Mr. Shepherd was bona fide, the title was not passed directly from the bank to him?

A. There is no doubt in the world that the transaction was perfectly bona fide. I do not think any one who has any knowledge of the transaction will hesitate in making the same statement. As to why he had the title conveyed to me instead of to himself is a matter, as I have stated in my answer heretofore, between attorney and client, and unless he authorizes me to make a full statement, I don't feel authorized to do so.

Q, Then you decline to answer this question on the ground the knowledge you have about the matter came to you from Mr. Shepherd while the relation of attorney and client existed between you?

A. I have already stated why I did not give a full statement of that matter. I don't think it either necessary to refuse to answer or make any further answer in relation to the matter.

Q. Have you any knowledge as to whether Mr. Shepherd had any interviews with any member or members of the Finance Committee of the Freedman's Savings and Trust Company relative to the purchase of this property, or with A. B. Mullet or any other member of the committee appointed by the Postmaster-General for the purpose of renting a piece of property for the use of the government relative to renting this property to the government?

A. I don't know anything about it—I don't think he had.

122 *Statement by the witness.*

I find, upon examination, that the deed from the Freedman's Savings and Trust Company to me, and the deed from Henry D. Loney and wife to me were both recorded on the 17th day of June, 1873, and this causes me to feel assured that my best recollection is correct, and that these two deeds were passed to me by the officers of the said bank at the same time that I passed to it the deed of trust and notes, and I remember now that I carried the deed of trust and notes in my pocket for some days, awaiting the receipt by the bank of the deed from Henry

D. Loney and wife, as well as the formal execution of the papers by the bank, as I have heretofore indicated.

The papers must have been exchanged on the 16th or 17th day of June.

A. C. BRADLEY.

Subscribed and sworn to before me this 6th day of July, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Adjourned to 11 a. m., 8th July, 1875.

Met pursuant to adjournment this 11 a. m., 2d July, A. D. 1875. Present, Messrs, Bradley and Bigelow.

Deposition of E. J. Sweet.

Whereupon EDWIN J. SWEET, a witness of lawful age, produced and sworn on behalf of defendants, being duly sworn according to law, deposes and says:

I reside in this city, and my profession is that of auctioneer and real estate broker.

I know all the parties to this suit.

By Mr. Bradley:

My occupation about 1st July, 1872, was the same as at present. I was then employed by Mr. B. H. Warner.

I did attend the sale of the McGhan property, 915 E st., N. W., in this city, on the 1st of July, 1872. I was auctioneer of the property for B. H. Warner.

I should judge that there were present at least 20 persons at the sale.

123 I did observe business men there whom I knew. I remember seeing Mr. Jno. W. Smith, Mr. Robert H. Graham, Mr. Geo. W. Stickney, actuary of the Freedman's Bank, and I think there were other business men whom I do not now remember.

I could not say positively the number of bids I received on the property. From the best of my recollection, I think there were four bids at least.

The last bid was made by George W. Stickney in behalf of the Freedman's Savings and Trust Company. It was for $13,000, I think—the memorandum is in my book and in my handwriting. I could not swear positively to whom the property was knocked down—to Mr. Stickney or the bank. I know it was for the Freedman's Savings and Trust Company, and I am quite sure the memorandum will show that.

The property was knocked down in due form. To the best of my recollection, it was to the Freedman's Savings and Trust Company—my memorandum will show that.

I should think, to the best of my recollection, at least a half hour was consumed in making the sale.

I made an effort to raise on the last bid of $13,000.

I will state briefly that it was a fair sale.

(Objected to bp Mr. Bigelow.)

I did not have any intention to sell the property to the Freedman's Savings and Trust Company at any rate. I had no intimation that the Freedman's Savings and Trust Company intended to bid on the property. I made the very best effort to sell the property at the highest

figure. I made no such statement as that the property would not be sold at the last bid, since something would have to be left for the family.

The postponements that were made of the sale of that property were made at the instance of Mr. McGhan to my personal knowledge.

Mr. McGhan called at the office of B. H. Warner in my presence on one or two occasions for that purpose. Sickness in his family was the reason assigned by him therefor; this is my impression. I will not state positively.

I have no knowledge of the sale being postponed at the request of Mrs. McGhan.

I do not regard the 1st of July the most unfavorable time of the year for selling real estate—the middle of winter I regard as the most unfavorable time.

124 I think the spring and the fall are the most favorable occasions for selling real estate.

I have been in the real estate business about four years.

I had knowledge of the condition of this property at the time of the sale. Internally it was in a bad condition.

There was an open sewer running in the cellar, and I considered the house, at that time, in an untenantable condition—principally in consequence of the open sewer—it was very offensive.

Considering the condition of the property, I consider the price realized was a fair one. I was with Warner for a year after that.

I remember seeing Col. Eaton at the sale. He did not, to my knowledge, bid at the sale. I knew him intimately. He was one of my warmest personal friends.

Cross-examined by Mr. Bigelow:

I began employment with Warner in the winter of '71 and '72. It is a little less than four years ago. He was then, and had been for several years a real estate agent and auctioneer. He did a great deal of business in that direction. I was his salesman in all the sales he had.

I continued in this capacity in the employment of Warner up to July, 1873. I made a large number of sales for him during that time, and this was among them.

I think I can remember who purchased at all the sales made by me, and can give the names.

I cannot give the names of every party who bid.

Q. What transpired at this sale that made you remember that Geo. W. Stickney made the bid upon which the property was knocked down?

A. The fact of his doing it—I remember that he did it.

I think I made a memorandum at the time, but I have it not with me. I stated in my examination-in-chief that the property was struck off to George W. Stickney, and to the best of my recollection it was for the Freedman's Savings and Trust Company.

Q. In whose name was the sale entered in your books at the time the sale was made?

(Objected to in absence of books.)

A. To the best of my recollection it was the Freedman's Savings and Trust Company, but the books will show.

125 Q. How does such a memorandum enable you to remember that Stickney bid the property in?

(Objected to since the witness has not so stated.)

A. I am not testifying from the memorandum. I have not seen that since I lett Warner. I am testifying from personal recollection.

Q. Is your recollection clear and distinct as to the fact that Stickney bid the property in?

A. It is.

Q. Has anything transpired since the beginning of this suit to refresh your memory in this matter?

A. Mr. Bradley met me on the street one day and asked me what I knew about it. I stated to him in substance what I have here testified to; this was several months ago. I think in that conversation I told Mr. Bradley that Stickney bid the property in. I did not state that Eaton bid on the property.

Q. Well, then, let me remind you that you also had a conversation just before this suit began, with one Robt. H. Graham. Do you remember that?

A. I do not; I do not dispute that I had, but do not remember it.

Q. Do you not remember talking over this sale with Robert H. Graham at his place of business on 8th street, just before this suit began, and in that conversation you said that either Col. Eaton or Mr. Alvord bid the property in, and that both bid upon the property?

A. I will swear positively that I had no such conversation.

Q. Do you swear that you had no such conversation with Mr. Graham at that place?

A. I will not swear that I had no conversation with him, but will swear that I had none such as that.

Q. Let me further remind you—don't you remember asking Rob't H. Graham what his object was in asking you these questions?

(Objected to.)

A. I don't remember having any conversation with Mr. Graham on the subject at all. I may have had, however. A number of persons questioned me about the matter, but I could not have stated that other matter you speak of.

Q. Have you mentioned the names of all those parties whom you recollect as being present at the sale?

126 A. No, I have not. Mr. Warner was there and I and Mr. Eaton. I think Mr. Alvord was there, but I am not positive, however; another gentleman standing in the doorway whom I had met at the house, I think he was boarding there. My memory is very distinct as to those who were there as I have named as there.

Q. Did you know at the time of the sale Dr. James E. Morgan, Col. Rob't Boyd, Jesse B. Wilson, Charles Flæsch, W. H. Brelsford, George Lanborn; did you know these parties or any of them?

A. I know several of these parties; I think Mr. Wilson and Col. Boyd were there also, but I would not swear positively; I have a vague recollection of their faces. The names I gave before were unassisted by the suggestions of anybody.

Q. Then your recollection is vague in some respects?

A. As to those you have named last, but not to those I first named.

Q. Is not your recollection vague as to the number of persons present?

A. It is vague as to the exact number, of course, but I think and testify to the best of my knowledge and belief that there were 20 persons present there.

Q. On what is your recollection based?

A. On the size of the crowd there.

Q. Is your recollection vague or certain as to the time occupied in making this sale?

A. I adhere to my former testimony; to the best of my recollection it was about half an hour. I did not time it.

Q. Then your recollection is not certain?

A. Is not uncertain.

Q. Is it certain?

A. It is certain as to what I have stated, that to the best of my recollection it was half an hour.

Q. Will you swear positively that it was half an hour?

(Objected to, because witness states his best recollection in the matter.)

A. I swear positively that to the best of my recollection it was half an hour.

Q. Do you recollect who made these four bids you mentioned?

A. I recollect two of these parties positively, Mr. Smith and Mr. Stickney.

Q. Your recollection as to the other parties is vague, is it not?

127 A. My recollection is vague as to whether there were others who bid. My impression is that there were more who bid. I think there were more than four bids.

Q. Do you recollect seeing Mrs. McGhan on the day of and at the time of the sale?

A. I do not.

Q. Were you ever on the ground and in the house before the day of sale?

A. Yes, sir.

Q. In what room?

A. I was in the parlor.

Q. In any other room?

A. I was upstairs a few days before the sale. I went there to look at the property.

Q. Did you see Mrs. McGhan at that time?

A. Not to know her.

Q. Who did you see?

A. Mr. McGhan, who showed me the property at my request, for the purpose of making the contemplated sale. I do not know if I was in the cellar on the day of sale. I was in it before the sale, I am certain.

Q. What took you down there?

A. I do not remember seeing Mr. McGhan on the day of sale, but I think he took me into the cellar when I went there.

Q. Is your recollection clear and distinct that it was before and not after the sale that you went into the house?

A. I was, I am sure, in the house before the sale. I am not sure I went in it on the day of sale. I went into it several times after the sale.

Q. Your knowledge is somewhat limited, is it not, as to the condition of this property on the day of sale?

A. It is not.

Q. State, then, the repairs that were necessary to put this house in good condition in detail.

A. I noticed that the plastering needed repairing in all the rooms that I visited—the parlor, the dining-room, kitchen, two or three rooms upstairs, and the halls; two or three rooms were occupied and I did not get into them; this was before the sale.

Q. What was the matter with the plastering in the parlors?

A. I will state, briefly, without answering that question di-
128 rectly; I noticed defects in the plastering throughout the house. I did not notice the length, breadth, or number of the cracks in the plastering or in what particular rooms they were the largest, and I did not pretend to state them. I noticed the house needed painting and papering throughout in the interior, and the wood work on the exterior of the house needed painting. That is about all that I can now detail. The impression was left on my mind that the house was much out of repair.

Q. The house, then, was out of repair as a house ordinarily would be from ordinary use and occupation, and there were no serious injuries or damages noticeable to the freehold? Is that true?

A. In answer to that I will state that the house was more out of repair than ordinary use would make it. I left the house with the impression that it was fearfully out of repair, and so stated to Mr. Warner.

Q. I will ask you whether you visited this house before the property was advertised for sale?

A. I think I did before on other business.

Q. Do you know who drew this notice of sale?

(Objected to.)

A. I think I did; it was drawn at my office; Mr. Warner might have done it, but I usually drew up the notices, and so I think I did in this case.

Q. Do you know the dimensions of this lot?

(Objected to as immaterial, and as matter of record shown in the deed.)

A. It was about 25 by 150 feet. I am not positive as to the exact dimensions. I think there was a 25 or 30 foot alley in the rear. There was a stable there in the rear. I could not swear it belonged to the house.

Q. I ask you as a man of considerable experience in real estate what ground was worth there at that time, at a fair price?

A. I will preface my answer by saying that in appraising property I assess deep lots in same location at a less price per square foot than lots of less depth; that is, a lot 100 feet deep is worth more than a lot 150 feet deep per square foot. If this lot is 24×159 feet, it is worth $1.25 per square foot, this is my opinion.

Q. How many rooms, if you know, does this house contain?

A. My knowledge, which is principally derived from Mr. McGhan, is that there are about 20 rooms of all sizes.

129 Q. How many stories high is the front main building?

A. Four stories. There is a three-story back-building to it.

Q. Are the ceilings to the rooms high or low?

A. The ceilings are a very good height.

Q. Did you notice that the exterior walls appear well made; any cracks?

A. They appear to be well made. I think I did notice a crack in the back building. I know nothing about the foundations.

Q. What do you estimate such a house, including the stable, would have cost in the building of it in July, 1872?

A. I should think that a house of that kind could have been built at that time for the sum of about $12,000. It could have been built any time within 50 years for less than $20,000.

Q. Do you consider July an unfavorable season of the year to sell real estate?

A. No, sir; I consider it a favorable season. I am now selling more

than I have at an earlier period of the season. The idea is that people leave the city about that time and that there are not so many bidders, but they do not leave until after the 1st of July.

Q. Do you remember in what papers the sale of this property was advertised?

A. We advertised at that time in the Republican and Star. I do not remember whether it was advertised in one or both of them.

Q. Coming down to the year 1873, do you remember whether Warner had the key of this building from the Freedman's Savings and Trust Co.?

A. No; nothing about that.

Q. At the time of this sale, July 1st, 1872, was Stickney the actuary or assistant actuary of the bank?

A. He was the assistant actuary; he was assistant actuary until Eaton left.

Q. Where were Eaton and Stickney when this house was struck off?

A. On the sidewalk in front of the house; I do not remember how they came there.

Q. Do you remember a buggy there?

A. I think Eaton came there in a buggy; I could not say
130 whether he came alone or not. He might have sat in his buggy; I will not be positive about that. I came there alone in my buggy.

Q. Do you remember conversing with Eaton when the crying of the sale was going on whilst he was in his buggy?

(Objected to.)

A. I do not recollect so doing.

Q. Do you recollect conversing with him at all during the sale?

A. No; I do not remember it; it is likely I did, but I do not remember.

Q. Do you not remember passing to the buggy during the crying of the sale by you (the buggy being directly in front of the house and you standing on the sidewalk) and speaking to Eaton, and then returning to your position and beginning to cry the property at $13,000?

A. I do not remember that that conversation did occur. I do not remember that it did not occur. I will not swear positively either way. I did not go to Eaton and take a bid from him, because he was trustee. I never knew him to bid on property when trustee.

EDWIN J. SWEET.

Subscribed and sworn to before me this 2nd day of July, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Met pursuant to verbal notice to and understanding between counsel at 11 a. m., the 16th July, A. D. 1875.

Present, J. G. Bigelow, esq., sol. for compl'ts; A. C. Bradley, esq., sol. for def'ts.

Messrs. Cook and Totten not present.

Stipulation.

Whereupon it is admitted by counsel for plaintiffs that the estate of the plaintiffs to the property in question is that of a leasehold as shown by Exhibit No. 1, filed with the answer of Alexander R. Shepherd to the bill. It is also admitted by counsel for plaintiffs that the fee simple

title to said property was at the time of sale vested in Anna M. Loney, formerly Anna McIves Van Ness.

F. P. B. SANDS,
Examiner in Chancery.

131 At 12.10 p. m. adjourned to meet Tuesday, 20th inst., at 11 a. m.

Met pursuant to last adjournment at 11 a. m. this 20th July, A. D. 1875.

Present, Mr. J. G. Bigelow, for compl's; Mr. Andrew Bradley, for def'ts.

The counsel for the other defendants not being present at 11.10, resumed the depositions for defendants.

Deposition of Martin M. Rohrer.

Whereupon MARTIN M. ROHRER, a witness of lawful age, produced on behalf of defendants, being duly sworn according to law, deposes and says:

I reside at No. 200 I street, N. W., in this city; I am a real-estate broker.

I know the defendants Shepherd and two of the commissioners of the Freedman's Savings and Trust Company. I do not know the complainants personally.

By Mr. Bradley:

I have been engaged in the real-estate business in this city for about eight years.

I have bought and sold for myself and others, and have made loans on real estate, and all of them have been very safe; and so I can judge of the value of real estate in this city.

I know the property No. 915 E street, N. W., formerly owned by Francis McGhan.

My attention was first called to it five or six years ago by Mr. McGhan himself, who called upon me to negotiate a loan. I think he wanted $12,000. I failed to get it, because the security was not regarded as sufficient; not that the property was not worth $12,000, but because it was not worth double value, or approximating double value, such as money lenders usually lend on.

The property was in pretty good condition then; not as good as it is now. I did not go through it to examine it then.

As far as the locality is concerned it is central, but not the best locality to live in; it is low, and otherwise the neighborhood is not so desirable as F street.

At the present time, with a good title, I should think that property worth $18,000.

132 In the spring of 1872 I think it would have brought a good deal more than it would now. Property sold then higher than it does now; I do not know how much it would have brought then; I think it would have sold more readily then. In that particular locality I have never been able to sell anything, and I do not know positively whether property there has in the last three years depreciated or not as much as in other localities. I do not think that property would sell to-day under the hammer for more than $14,000 or $15,000 by the way property sells

nowadays. The value of property is gauged pretty much by the rent obtained for it.

I have not much experience of the cost of building. I do not know how that property is finished inside, and I could not tell the cost of such a building.

Cross-examined by Judge Wilson:

Q. State whether or not it is a large, roomy house.

A. Yes; it is a fine, large house.

Q. Is it or not a house of good external appearance?

A. It is very fair.

Q. State whether or not it would be good for a boarding-house.

A. I should judge it would be.

Q. How far is it from the Post-Office Department?

A. A square and a half.

Q. From the Interior Department?

A. Two squares and a half.

Q. On which side of the street is it located?

A. On the north side.

Q. Is that or not the more desirable side of the street?

A. That is a matter of opinion. In that particular locality it is. I like the south side myself.

Q. State whether or not property in that locality is generally held by persons able to hold it, and whether or not there has been for the past three or four years much of it in the market.

A. As to the first, I could not answer; as to the second, there has not, to my knowledge, been much of it in the market.

Q. State whether or not there is now a general depreciation in the values of property where the same is brought to sale at auction, compared with what it was in 1872.

A. Yes, sir; there is.

133 Redirect:

Q. Judging from your knowledge of real estate at the present time, as compared with it in the spring of 1872, is it your opinion that that property would have sold better at the latter time than it would now?

A. I do not think the property would. You might have found a purchaser more readily, but I do not think it would have brought more then than now; I do not think it would have brought any more. That house would have brought more in any other locality; but, although I do not know why, there has been always a prejudice to that square.

The last question and answer objected to as leading, irrelevant, an incompetent.

M. M. ROHRER.

Subscribed and sworn to before me this 20th day of July, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Adjourned to meet on Thursday, 22d instant, at 12 m.

Met at 12 m., this 22d day of July, A. D. 1875.

Present, Jeremiah Wilson & J. G. Bigelow, sol'rs for compl'ts; A. C. Bradley, esq., sol'ct for def'd't.

At 12.45 p. m., the witness not appearing, adjourned to meet at 10 a. m. Friday, 23d instant.

F. P. B. SANDS,
Examiner in Chancery.

Met pursuant to last adjournment at 10 a. m., this 23d day of July, 1875.

Present, J. G. Bigelow, esq., for compl'ts; A. C. Bradley, esq., for def'd't Shepherd. Messrs. Cooke & Totten not present.

Deposition of B. H. Warner.

B. H. WARNER sworn and examined by the examiner:

Q. What is your name, age, and occupation?

A. Brainard H. Warner; I am of legal age; I am real-estate agent and broker.

134 Q. Where do you reside?

A. Washington City, District of Columbia.

By Mr. Totten:

Q. What was your business in 1872?

A. I was a real-estate broker and auctioneer.

Q. Did you sell for the Freedman's Bank in July, 1872, a house on E street between 9th and 10th?

A. I did.

Q. Do you remember the circumstances attending that sale?

A. I do. Yes, sir.

Q. How many people were present?

A. Well, there were a good many people there.

Q. About the number of bidders?

A. There were, at least, twenty.

Q. How many actual bidders were there?

A. Well, I remember two, I think there were more. I didn't make the sale myself. It was made by Mr. Sweet; he was salesman for me. I know there were two.

Q. Were you present at the sale?

A. I was.

Q. Made under your direction by Mr. Sweet, as crier?

A. Yes, sir.

Q. Who bid the property off?

A. Some one who represented the Freedman's Bank.

Q. Who?

A. I don't remember whether it was Mr. Stickney or Mr. Alvord; it was one of them. I think it was Mr. Stickney.

Q. Was Col. Eaton present?

A. He was. He was trustee.

Q. Did he bid the property off?

Q. I don't know whether it was his reserve bid or not. If he is directed by the party secured he has the right to put in a bid for them, but whether he bid in the property or not, I don't know. I don't think he did.

Q. Who did.

A. Some one representing the Freedman's Bank.

Q. Don't you know who bid it in?

A. I am almost positive.

Mr. Bigelow:

I object to this kind of an examination; it is cross-examination.

135 Q. Where was Col. Eaton during the time of the sale?

A. Right in front of the property.

Q. Where was Alvord and Stickney?

A. They were in front of the property. I remember talking with Stickney.

Q. What sort of a looking man was Alvord, at that time?

A. Well, he was white haired and whiskered, between fifty and sixty years of age.

Q. How long were you in the act of settling the property?

A. From twenty minutes to a half hour, so long that I was ashamed to hear the crier continue there on the same old tune.

Q. Was there any efforts made to obtain a higher price than the one obtained for it?

A. The greatest kind of efforts.

Q. Were any postponements made of the sale of this property? If so, state on whose request.

A. There were a number of postponements made. They were made on the request of Mr. and Mrs. McGhan.

Q. What reasons were assigned for these postponements by them?

A. One reason was that Mrs. McGhan was in very poor health at that time.

Q. Was there anything said about the payments of the debts?

A. Yes; it was intimated that the money might be raised for the payment of the debts if the sale was postponed.

Q. How often did you postpone it?

A. I don't remember.

Q. Was it once or twice or three times?

A. It was several times.

Q. Was it over three times?

A. I could not answer that without referring to the papers.

Q. Was there a fair warning given before the property was knocked off to whoever bought it?

A. Yes, sir.

Q. Have you got a memorandum of the sale?

A. Yes, sir.

Q. To whom does it show the property was knocked off?

A. I can't state. I remember that the bank was very anxious to get rid of buying it.

136 Q. Did you make any efforts to get outside parties to purchase the property?

A. I did. I made efforts to get persons to the sale, because I thought it was a very hard one. I would have much rather seen the money paid than have the property sold. Of course, I made something by the sale of it.

Q. Were you employed by the Trust Company to sell this property, after it had been sold to them?

A. I was. They said they wanted to get rid of it.

Q. Did you try to sell it?

A. I did.

Q. How long did you have it in your hands before it was disposed of?

A. I had it some time. I don't remember the exact time.

Q. Was the price brought at the sale a reasonable one for the property?

A. It was a reasonable one considering all the circumstances, but it was reasonable considering what it would actually rent for in that condition.

Cross-examined by Mr. Bigelow:

Q. Do you remember the names of any of the parties present at this sale?

A. I remember Col. Eaton was there and Mr. Stickney and Mr. Smith. I stood by those gentlemen.

Q. You are selling a great many houses in the course of business as a real-estate broker?

A. Yes, sir.

Q. You have stated you made efforts to get parties there to purchase. Do you remember any of the parties?

A. A man can't charge his memory with those things. I simply remember that I did exert myself.

Q. Do you consider this a favorable season for selling property of that character?

A. Well, I don't know that it can be called the most favorable season.

Q. How much was that property worth at the time of the sale?

A. Well, if it had been in a good condition—in a first class condition—I might have got at private sale eighteen or twenty thousand dollars for it, possibly. In the condition it was then, thirteen thousand dollars was a reasonable price for it, under the hammer.

137 Q. How much do you think it would have cost to put it in a good condition?

A. Well to put it in reasonable good repair it would have cost from two to three thousand dollars.

Q. How much then would the property have been worth?

A. If in good repair it might possibly have brought eighteen or twenty thousand dollars.

Q. Do you remember to whom you made a proposition to purchase this property—what officer of the bank?

A. I made my proposition in writing, I think, to be submitted to the board of trustees.

Q. Do you know whether that proposition was ever submitted to the board of trustees?

A. I know I repeated the proposition several times before it was accepted.

Q. At what time did you make these propositions?

A. I don't remember the dates.

Q. Can't you state the month?

A. I cannot.

Q. You also made a proposition to rent the property to the government?

A. Yes, sir.

Q. Do you remember the date of that proposition?

A. I do not.

Q. Can you recall the language of the latter proposition?

A. I cannot.

Q. Do you remember to whom you made that proposition?

A. To the Postmaster General.

Q. Do you remember how much you proposed to ask for the rent of this property?

A. $5,000 per year after it was put in good repair.

Q. Didn't your proposition state that it was in good repair?

A. Large repairs had been made, but there were some other repairs that had to be done.

Q. What sort of repairs?

A. Well, a number of repairs. It had to be put in a condition for offices.

Q. Did you consider the property was worth that to the government.

138 A. I don't think that is relevant. I object to answering that question. It was my business to get that.

Q. Did you make this proposition to rent the property while you were agent of the bank for the sale of it?

A. I don't remember. I made it with a view of buying the property if it was accepted.

Q. Did you make known to the bank that you had an opportunity to rent this property to the government?

A. I think I told them I had a plan on foot, whereby the building could be rented, and I was informed that the bank could not rent it under their charter.

Q. Then they accepted your proposition to purchase with the knowledge that you could rent it to the government?

A. I don't think they knew the figures.

Q. With whom did you negotiate for the renting of this property to the government?

A. With General Creswell.

Q. Did you ever have any interview with A. B. Mullet?

A. I took him through the house.

Q. Who fixed the rent at $4,200?

A. General Creswell. I merely took Mr. Mullet through the house to point out some of the repairs and changes that would be necessary as regards light and the division of rooms.

Q. Did you ever make any repairs after this time?

A. There were some made.

Q. Whom were they made by?

A. By A. R. Shepherd.

Q. Paid for by Shepherd?

A. Paid for by Mr. Bradley as the agent or attorney of Shepherd.

Q. What sort of repairs or changes were made?

A. Well, I don't know—change of partitions, water-closets, furnaces, &c.

Q. Are you certain the government did not pay for them?

A. Yes, sir; it is stipulated in the lease that these repairs should be made at the expense of the lessor.

Q. Do you know the lessor ever paid a cent for the repairs?

A. It is not my business to know that. I suppose he did though, of course.

Q. You say that you are not certain whether Col. Eaton bid this property in for the bank or Stickney?

139 A. I don't remember; some officer of the bank; I don't suppose it was Eaton.

Q. And you say the trustee has the right to make the last bid?

A. No, I didn't say that.

Q. What did you say?

A. I said the trustee has the right to reserve a bid when the property——

Q. What do you mean by reserving a bid?

A. The right to withdraw the property from sale.

Q. You didn't mean, then, by reserve bid that Col. Eaton had a right to buy this property in for the bank?

A. No, sir.

Q. Who employed you to sell this property at auction?

A. The trustee.

Q. Did he direct you where to advertise it?
A. I don't remember.
Q. In what paper or papers did you advertise it for sale?
A. I don't remember that at present.
Q. Was there any advertisement of the sale besides those contained in the papers?
A. I don't think there was.
Q. Did you pay the bills?
A. Yes, sir.
Q. How much did they amount to?
&. I don't remember.
Q. You don't remember the newspapers?
A. No, sir; not without reference to my books.
Q. Would the books show?
A. Yes, sir.
Q. Would the books show how much you paid?
A. Yes, sir.
Q. Will you examine your books and be able to answer this question accurately at our next session?
A. If I have the time I will. If I have an opportunity to be here.
Q. When you paid for the advertising of the sale of this property, did you take a receipt or receipts?
A. Certainly.
Q. What did you do with those receipts?
A. Turned them over to the trustee?
Q. Did these receipts show the exact amount you paid?
A. Yes, sir.
140 Q. Do you say you paid the full amount for advertising the sale of this property expressed on the face of those bills?
A. I paid the legal rates charged by the newspapers for advertising.
Q. My question is whether the newspapers in which you advertised this sale gave you a commission?
A. That is my own business and none of yours, and I decline to answer.
Q. Do you decline to state whether you received a rebate or deduction on the face of these bills from the newspapers?
(Objected to by Col. Totten as irrelevant and proper.)
A. I do.
Q. Did you charge against the proceeds of the sale of this property the entire amount of the face of these bills for advertising the sale of this property?
A. I charged the legal rates charged me by the newspapers for advertising, which was the face of the bills which were receipted.
Q. I didn't ask you anything about the legal rates, I simply asked you whether you charged Mrs. McGhan for advertising this property more than you actually paid for it?
A. I charged Mrs. McGhan nothing. I had nothing to do with Mrs. McGhan.
Q. Did you charge against the proceeds of the sale of this property, as the cost of advertising the sale thereof, a sum greater than you actually paid?
A. I charged no more than the newspapers charged me?
Q. I didn't ask you the amount the newspapers charged you, I asked you the amount you paid.
A. I told you I didn't remember the amount I paid.
Q. Do your books show how much you paid?

A. Yes, sir.
Q. Will you examine you books and ascertain?
A. I will.
Q. Will you aseertain also in what newspapers you advertised the sale of this property?
A. I have already answered I would.
Q. How did you happen to have an interview with Mr. Shepherd relative to the purchase and renting of this property?
A. Well, I knew he was a man of nerve, and I didn't feel like
141 carrying out the—— I didn't want to run any risk, and I went to him the same as I would go to any other business man. First I intended to have him go equal shares in the property with me.
Q. How much did you propose to give for this property?
A. I don't remember how much it was, $17,500 or $18,000.
Q. How much cash down was to be paid?
A. I don't recollect anything about it.
Q. Was any paid at the sale that Bradley subsequently made?
A. $1,500.
Q. How was the balance to be paid?
A. On time. I can't recollect the payments.
Q. Have you read the bill of the plaintiffs in this case?
A. I have not, and don't know anything about it.
Q. Don't know whether it is correctly stated or not?
A. I do not.
Q. Now you say you sought out Mr. Shepherd, because you didn't care to undertake the responsibility yourself?
A. Yes, sir.
(Objected to by Col. Totten, because it has nothing to do with this case.)
Q. State wherein there is any money responsibility.
A. The money responsibility consisted in the deferred notes.
Q. Would not the rent pay for them?
A. No, sir.
Q. How do you make that out?
A. It is none of my business to figure out—you can do that yourself.
Q. How much was the rent per annum to be?
A. $4,200.
Q. Do you remember the amount of the first note?
(Objected to by Col. Totten.)
A. I have no recollection.
Col. TOTTEN. I submit to the examiner, he has no business to——
Mr. BIGELOW. I am examining the witness upon his proposition to purchase, and not upon the notes that Mr. Bradley has given.
Q. Which did you see first relative to the purchase and renting of this property, Shepherd or Bradley?
A. I saw Shepherd.
142 Q. What did he say to you?
A. He said he would think the matter over.
Q. Did you see him after that?
A. I did.
Q. Did he request you to see Bradley?
A. I think he did.
Q. Didn't you say to Bradley that Shepherd directed you to see him?
A. I don't recollect.
Q. Do you know whether Shepherd had any negotiations with any party connected with the bank?

A. I don't think he had.

Q. You have no knowledge upon the subject?

A. I have not.

Q. Do you know whether he had any interviews with anybody on behalf of the government, relative to the renting of the property?

A. I don't think he had. I wanted him to have, but I don't think he had.

Q. Do mean to say you yourself made all arrangements for the renting of this property?

A. I mean to say I transacted all the business.

Q. After perfecting all these transactions, you reliquished all your right in the premises to Shepherd?

A. I did.

Q. Without consideration?

(Objected to by Col. Totten.)

A. I decline to answer.

Q. What did he pay you for?

A. For leasing the property.

Q. He paid you then as his agent?

A. No, not at all. I was principal up to that time. He paid me for my bargain. I can state he took that property in my accommodation. I was feeling very bad at the time, and I was disheartened and didn't want to take the property.

Q. Who paid you your commissions for the sale of this property?

A. I charged the Freedman's Bank five hundred dollars ($500), and got it and spent it.

Q. What does that five hundred dollars cover?

A. It covers my selling the property.

Q. Do you mean to say for the sale of the property made July 1st, 1872, by D. L. Eaton?

143 A. I do not. I mean the sale I made for the bank—the private sale I made long afterwards.

Q. Who paid you the auctioneer's commissions in the sale under Eaton made July 1st, 1872?

A. Col. Eaton paid me, or the bank.

Q. Do you remember how much they paid you?

A. They paid me regular commission.

Q. You have a statement before you of the bank in their Exhibit A I call your attention to this item, charged July 8, 1872, of $736.75; was that amount paid you?

A. It was if it is charged. Of course it was. I don't remember the exact figures.

Q. Do you remember how you were paid?

A. In cash.

Q. By whom were you paid?

A. By a clerk in the bank. I don't know his name; a light-haired young man.

Q. Did you give a receipt for this amount?

A. I did. I gave a receipt for whatever they paid me.

Q. To whom did you give the receipt?

A. To the one that paid me.

Q. Did you give a receipt to Col. Eaton, the trustee?

A. I suppose I did. I gave a receipt that could be used as a voucher.

Adjourned to meet Friday, July 2, 1875.

Met pursuant to adjournment noted on page 133.

Present, J. G. Bigelow, esq., sol'r for compl't; A. C. Bradley, esq., sol'r for def'd'ts.

Whereupon cross-examination of Mr. Warner was continued.

Q. Recalling your attention to the charge appearing in Exhibit A, appended to the answer of the Freedman's Savings and Trust Co. of $736.75, I will ask you whether you as the auctioneer made up that charge?

A. If they state it so, I presume it is correct.

Q. Will you be kind enough to give the items that compose that charge?

A. I forgot about that and am not prepared to give those items—and only brought my auction-book. I will furnish a detailed statement to be part of this answer on that point marked Exhibit B. H. W., No. 1.

144 Q. Can you tell me with certainty in what newspapers the sale was advertised?

A. In the Republican, I know; I cannot say whether it was in the Star or not; the account I render will show.

Q. Have you got with you the amount of the bill rendered by the Republican?

A. I have not; I have no bills.

Q. Will you specify in the bill, which you say you will render, the newspapers in which this notice was published; the amount of the bills rendered therefor; the amount of commissions allowed you in each case by the newspaper; and whether your business card in the following language, "By B. H. Warner, Real Estate Broker and Auctioneer, 729 Seventh street, between G and H," is embraced in these bills; and whether you have charged a tax of one-fourth of one per cent., known as the District of Columbia tax imposed upon the sales of auctioneers; if so, the cost of the publishing of your business card in the newspapers, and the number of squares it occupies in the newspaper; and the amount of the aforesaid tax, and also the legal commission allowed you, as auctioneer, for the sale of this property?

(Objected to as irrelevant, immaterial, and incompetent as far as the question relates to any participation by the witness in the cost of advertising and as having been already answered by the witness.)

A. My bill will show all the facts in the case so far as the legal expenses and charges of the auctioneer are concerned. The bill will specify everything mentioned in your question except that part which relates to my commissions on advertising and the business card. As to these points, I decline to answer, as I do not think it has anything to do with the case.

The counsel for complainants request the examiner to certify the above question and answer to the court to rule upon the propriety of the question as propounded to the witness, as to the points wherein he declines to answer.

F. P. B. SANDS,
Examiner in Chancery.

By stipulation of counsel the time for taking the depositions to be read in this cause is extended for ten days from date, July 23d, 1875.

F. P. B. SANDS,
Examiner in Chancery.

145 Met pursuant to last adjournment this 28th day of July, at 10 a. m.

Present, J. G. Bigelow, solicitor for complainants.

The examiner was here notified that the court ruled out the question certified up at the last session.

The witness, Mr. Warner, being present, says that he has not thus far been able to prepare the statement called for and promised, the papers not being in his possession, but that he will prepare and produce it.

The counsel for defendants not being present, the examiner, at suggestion of counsel for complainants, at 11 a. m. adjourned to meet at 10 a. m., 29th July, 1875.

F. P. B. SANDS,
Examiner in Chancery.

On 30th July, A. D. 1875, Mr. Warner, the witness, produced and filed the statement called for, and it is marked as indicated on page 144.

BRAINARD H. WARNER.

Subscribed and sworn to before me this 30th day of July, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

The defendants here close.

DETAILED STATEMENT FURNISHED.

WASHINGTON, D. C., *July* 28, 1872.

B. H. Warner to the Evening Star Newspaper Co., Dr.

To advertising in the Evening Star, as follows:

April	5, '72.	T. S. Eaton,	11 s.,	Ev.	9		$52	25
"	25, "	Post. "	12 s.,	"	10		63	00
May	15, "	" "	12 s.,	"	14		93	00
June	15, "	" "	13 s.,	"	7		39	00
"	22, "	" "	15	"	5		41	25
							$288	50

Received payment for Co.,

JNO. C. HUNTER, *B* .

146 WASHINGTON, D. C., *July* 28, 1875.

Mr. B. H. Warner to the National Republican, Dr.

For advertising as follows:

1872—							
April	5.	Sale D. L. Eaton,	10 sq.	Ev.	9	$47	50
"	24.	Post. "	11 "	"	10	57	75
May	15.	" "	12 "	"	14	87	00
June	15.	" "	13 "	"	4	29	35
"	24.	" "	15 "	"	4	32	75
						$255	25

Received payment,

W. MURTAGH,
Per HERRON.

WASHINGTON, D. C., *July* 1, 1872.

Mr. Daniel L. Eaton, trustee, to Brainard H. Warner, real estate broker and auctioneer, Federal Buildings, corner of Seventh and F streets N. W., Dr.

To advertising sale of 915 E street, as per Evening Star bill attached	288 50
Do. per Republican	255 25
To commission on $13,000	148 00
" corporation tax	32 00
" posters	12 50
	$736 25

Paid.

B. H. WARNER, *Auctioneer.*

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, F. P. B. Sands, an examiner in chancery in and for the District of Columbia, do hereby certify, that in pursuance of verbal agreement between counsel, and due notice, the foregoing depositions were taken down and reduced to writing from the statements of the witnesses at the
147 times and places designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence and in that of counsel then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify, that I am not of counsel for any of the parties to said cause nor in anywise interested therein.

F. P. B. SANDS,
Examiner in Chancery.

In the supreme court of the District of Columbia.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY, a corporation duly incorporated under act of Congress, plaintiff,
vs.
EDWARD CLARK, FRANCIS MCGHAN and LOUISA McGHAN, defendants.

No. 10023. At law.

RECORD OF THE FORMER EJECTMENT.

Declaration.

The plaintiff sues the defendants: 1st. To recover that certain parcel of land in the city of Washington, District of Columbia, being all that part of lot numbered four (4) in square numbered three hundred and seventy-seven (377) as the same are designated and described upon the plats and plans of said city, contained within the following metes and bounds: beginning for the same at the southwest corner of said lot on E street north, and running thence north one hundred and fifty-nine (159) feet to the alley in the rear of said lot; thence east with the line of said alley twenty-four (24) feet; thence south one hundred and fifty-nine (159) feet to

said E street; and thence west with the line of said street twenty-four (24) feet to the place of beginning, of which the plaintiff was lawfully possessed on the 2d day of July, A. D. 1872, when the defendants entered the same and unlawfully ejected the plaintiff therefrom, and unjustly detain the same from the plaintiff.

148 2d. And to recover possession of all that certain parcel of land particularly described in the first count of this declaration, which the defendants unjustly detain from the plaintiff.

And the plaintiff claims possession of said part of said lot with the appurtenances and costs of suit.

WM. F. MATTINGLY,
Attorney for Plaintiff.

The defendants are to plead hereto on or before the first special term of the court occurring twenty days after service hereof, otherwise judgment.

MATTINGLY, *for Plaintiff.*

In the supreme court of the District of Columbia, the 22d day of Nov. 1872.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY, plaintiff,
vs.
EDWARD CLARK, FRANCIS MCGHANN, AND LOUISA McGHAN, defendants.
} At law. No. 10023.

Writ for possession.

The President of the United States to the marshall for said District, greeting:

You are hereby commanded, without delay, to cause the plaintiff to have possession of part of lot 4, square 377, beginning at the southwest corner of said lot on E street north, and running thence north 159 feet to an alley; thence east with the line of said alley 24 feet; thence south 159 feet to E street, and thence west on the line of said street 24 feet to the place of beginning, for his term therein yet to come and unexpired, according to his recovery thereof in this action. You are also commanded to make of the goods and chattels of the defendants the sum of $25.80 adjudged by the court here to the said plaintiff for its costs and charges laid out and expended in and about the premises. And do you return this writ into the clerk's office of said court immediately

149 after you have executed it, so endorsed as to show when and how you have executed the same.

Witness D. K. Cartter, chief justice of said court.

R. J. MEIGS, *Clerk.*

MATTINGLY.

Possession delivered.

Received of A. Sharp, U. S. marshall, D. C., the premises named in the within writ.

G. W. STICKNEY, *Actuary.*

In the Supreme Court of the District of Columbia, the 3d day of October, 1872.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY Plaintiff, *vs.* EDWARD CLARK AND LOUISA MGHAN, DEFENDANT.	At Law. No. —

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court, on the first day of its special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MATTINGLY.

(Endorsed:) No. 10,023, at law. Summons. The Freedman's Savings and Trust Co. vs. Edward Clark and Louisa McGhan. Issued 3d October, 1872. Eject copy nar to take up. I do authorize and depute L. M. Gramer to serve this writ on Louisa McGhan. A. Sharp, marshal, Oct. 3, '72. Served copies of this declaration, notice to plead, and this summons, on both the defendants, the 9 day of Oct., 1872. A. Sharp, marshal. Sd. Oct. 9th, '72. Edwards.

In the Supreme Court of the District of Columbia, the 11th day of September, 1872.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY, Plaintiff, *vs.* EDWARD CLARK, FRANCIS MCGHAN, AND LOUISA McGhan, Defendant.	At Law. No. 10,023.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court, on the first day of its special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MATTINGLY.

(Endorsed:) No. 10,023, at law. Summons. The Freedman's Savings and Trust Company vs. Edward Clark, Francis McGhan, and Louisa McGhan. Issued 11 September, 1872. Served copies of the declaration, notice to plead, affidavit, and this summons, on the defendant, Francis McGhan, the 11 day of Sept., 1872. A. Sharp, marshal.

1872, Novr. 7.

THE FREEDMAN'S SAVINGS AND TRUST COMPANY, a corporation duly incorporated under Act of Congress, Plaintiff,
vs.
EDWARD CLARK, FRANCIS MCGHAN, AND LOUISA McGHAN, Defendants.

At Law. No. 10,023.

The plaintiff, by its attorney, William F. Mattingly, prays judgment of his demand against the defendants, who, though served with copies of the declaration, notice to plead, and summons, October 9, 1872, have not pleaded to the action: Therefore it is considered that the plaintiff recover against them that certain parcel of land in the city of Washington, District of Columbia, being all that part of lot numbered four (4), in square numbered three hundred and seventy-seven (377), as the same is designated and described upon the plats and plans of said city, contained within the following metes and bounds: Beginning for the same at the southeast corner of said lot on E street north, and running thence north one hundred and fifty-nine (159) feet to the alley in the rear of said lot; thence east with the line of said alley twenty-four (24) feet; thence south one hundred and fifty-nine (159) feet to said E street; and thence west with the line of said street twenty-four (24) feet to the place of beginning; and also possession of the same with the appurtenances, and $——— costs of suit, and have execution thereof.

Supreme Court United States.

CLARK ET AL.
vs.
COMRS. F. S. & T. Co.

October Term, 1879. No. 58.

It is hereby stipulated and agreed that the foregoing are true copies of the original writ to answer or plead and the judgment at law, rendered in the Supreme Court of the District of Columbia in the cause mentioned on pages 95 and 96 of the printed record in this case, and that the said copies of writ and entry of judgment having been omitted by accident or mistake from the record sent up to this court, they may now be inserted on page 96 of said printed record, with the same force and effect as if they had been copied and sent up with the record.

October 29, 1879.

ENOCH TOTTEN,
For F. S. & T. Co., Appellees.
SHELLABARGER & WILSON,
J. G. BIGELOW,
By J. G. BIGELOW,
For Appellants.

(Endorsed:) Law, No. 10,023. The Freedman's Savings and Trust Company vs. Edward Clark, Francis McGhan, and Louisa McGhan. Copies of writ and judgment record, with stipulation of counsel to make up defective record.

Marshall's return.

Possession of the premises delivered to the actuary of the bank. See his receipt on back of writ.

A. SHARP, *Marshal.*

DEC. 9TH, '72.

TESTIMONY IN REBUTTAL.

Depositions in rebuttal on behalf of the complainants.

Met pursuant to notice this 29th day of July, 1875.

Present, J. G. Bigelow, sol'r for compl'ts; Messrs. Totten & Bradley, sol'rs for d'f'd'ts.

Deposition of John Sullivan.

JOHN T. SULLIVAN, a witness produced on behalf of complainants, being duly sworn according to law, deposes and says:

I reside 1351 H street northeast. I am clerk and collector for the Evening Star Company.

By Mr. Bigelow:

I have been employed by the company ever since it has been in existence. I have been in the Star office for ten years. I have brought with me the files of the Star from January 1st, 1872, to December 31, 1872.

Q. I will call your attention to the advertised notice of sale of part of lot 4, square 377, by Daniel L. Eaton, trustee, inserted 5th April,
150 1872. I will ask you how many squares are embraced in that notice?

A. Eleven squares.

Q. Be kind enough to state what constitutes a square?

A. Four lines.

Q. I will ask you whether the business card of B. H. Warner, in the following language: "By B. H. Warner, auctioneer and real estate broker, No. 729 Seventh street," is embraced in the eleven squares which contain this notice?

(Objected to by Mr. Bradley as irrelevant and immaterial and incompetent.)

A. Yes, sir.

Q. I will show you the notice and ask you to state the numbers of squares occupied by that business card?

(Same objection.)

A. Three-fourths of a square.

Q. What is the amount charged and the number of times that notice appeared?

(Same objection.)

A. The notice appeared nine times and the amount charged is $52.25.

Q. Does the publication of his business card enter into this charge of $52.25?

(Same objection.)

A. Yes, sir.

Q. What rebate or commission, if any, did you make to Warner in the payment of this charge if he has paid it?

(Same objection.)

A. We made a rebate or commission of 33⅓ per cent. as a collection fee. He has paid the bills.

Q. Was this rebate or commission upon the entire charge of $52.25? (Same objection.)

A. Yes, sir.

Q. Was there a notice of the postponement of this sale published in the Star?

A. Yes, sir; four postponements.

Q. I will consider first the first postponement. To what time in it was the sale postponed?

A. The first postponement was until the 15th day of May, 1872.

151 Q. How many squares was embraced in that notice and postponement?

A. 12 squares.

Q. Is Warner's business card embraced also in the same? (Objected to as immaterial, irrelevant, and incompetent.)

A. Yes, sir.

Q. What did the newspaper charge for this notice and postponement?

A. Sixty-three dollars.

Q. Did you allow a rebate, also, for this charge of $33⅓ per cent? (Same objection.)

A. Yes, sir; as collection fee.

Q. I will consider now the second postponement. To what date is the sale therein postponed?

A. From May 15th to 15th day of June, 1872.

Q. How many squares did the notice and postponement occupy?

A. Twelve.

Q. What is the amount of the charge?

A. Ninety-three dollars.

Q. Was Warner's business card embraced in this charge? (Same objection repeated.)

A. Yes, sir.

Q. Did you give him a commission of 33⅓ per cent. on this charge? (Objected to on same grounds.)

A. Yes, sir; as a collection fee.

Q. I now consider the third postponement. To what time was the sale therein postponed?

A. Twenty-second day of June, 1872.

Q. How many squares are in this notice and postponement?

A. Thirteen squares.

Q. Is Warner's business card embraced in this number of squares? (Objection repeated.)

A. Yes, sir.

Q. What was the charge?

A. Thirty-nine dollars.

Q. Did you also make a rebate of 33⅓ per cent. on this charge?

152 (Same objection.)

A. Yes; as a collection fee.

Q. I come now to the fourth and last postponement. To what time is the sale therein postponed?

A. To the 1st day of July, 1872.

Q. How many squares are embraced in this notice and postponement?

A. Fifteen.

Q. Is Warner's business card embraced in this notice and postponement?

(Objection repeated.)

A. Yes, sir.

Q. What was the charge made in this case?

A. $41.25.

Q. Was a rebate of 33⅓ per cent. allowed Warner upon this?

(Same objection.)

A. Yes; as a collection fee.

Q. Now, will you state to me the entire amount the "Star" rendered a bill for to B. H. Warner on account of publishing this notice of sale and the postponements mentioned?

A. $288.50.

Q. In the payment of which did you allow Warner a rebate of 33⅓ per cent?

(Objected to as before.)

A. We allowed him a collection fee of 33⅓ per cent.

Q. Can you state the entire number of squares Warner's business card occupied in the notice and postponements referred to during the entire number of times they appeared in the Star?

(Same objection renewed.)

A. It takes up three-fourths of a square each time, and appeared forty-five times.

Q. According to the bills you rendered, can you tell what the cost of Warner's business card would amount?

(Objected to as before.)

A. I can make a calculation and let you know; $17.13.

Cross-examined by Mr. Bradley:

Q. To whom is this rebate or collection fee allowed according to the custom of newspapers?

153 (Objected to as irrelevant.)

Q. To all auctioneers only.

Q. What is the object of this allowance?

(Objected to as irrelevant.)

A. We consider it the same as fee to collector; sometimes we would be three or four years out of our money if we did not have an arrangement of that kind.

Q. Would that commission be allowed to me or any other attorney?

(Objected to as irrelevant.)

A. No, sir; I would charge you the same as rendered in that bill.

Q. In the bill of the Star for advertising this sale are any other than the customary or schedule rates charged?

A. No, sir.

JNO. T. SULLIVAN.

Subscribed and sworn to before me this 29th day of July, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Deposition of William H. Pope.

WILLIAM H. POPE, a witness produced on behalf of complainants, being duly sworn, according to law, deposes and says:

I reside in Washington, D. C. I am the business manager of the National Republican, and have been so engaged fourteen years.

By Mr. Bigelow:

Q. I will ask you whether on the 5th of April, 1872, you published in

the National Republican for B. H. Warner, auctioneer, a notice of the sale at auction of part of lot 4 in square 377, Daniel L. Eaton being the trustee?

A. Yes, sir.

Q. How many times did that notice appear in the Republican, and how many squares did it embrace? and state what constitutes a square.

A. Four lines constitute a square—there was 10 squares, inserted nine times.

154 Q. I will ask you whether the business card of B. H. Warner in the following language: "By B. H. Warner, Auctioneer and Real Estate Broker, No. 729 Seventh street, between G and H," is embraced in that number of squares?

(Objected to as irrelevant, immaterial, and incompetent.)

A. Yes, sir.

Q. Can you tell how many squares that business card occupies?

(Same objection.)

A. One square.

Q. What was the amount of the bill rendered for the publication of this notice? and state whether the same has been settled.

A. The amount was $47.50 and the bill has been settled.

Q. State whether in the settlement of this bill you allowed Warner a rebate or commission?

(Objection repeated.)

A. We allowed Mr. Warner a commission as a collector, and to insure us the payment of the bill—the allowance was 33⅓ per cent.; under this arrangement Mr. Warner was liable for the bill.

Q. I will ask you whether you published notices of the postponement of the sale?

A. Yes, sir; four postponements.

Q. I will now take up the first postponement. To what time was this sale therein postponed?

A. To May 15th, 1872.

Q. How many times was this notice in this case and postponement inserted, and the number of squares it occupied?

A. It made eleven squares, and was inserted once.

Q. What was the amount of the charge?

A. On that, $8.25.

Q. I will consider the second postponement. To what time was the sale postponed?

A. To June 15th.

Q. How many squares this notice and that postponement occupy, and how many times did it appear?

A. It made 12 squares, and was inserted 14 times and made a charge of $87.

Q. I will consider now the third postponement. To what time was the sale postponed? How many squares were occupied? The number of times of insertion, and the charge therefor?

155 A. It was postponed to the 22d June, 1872; thirteen squares, four times, and amounted to $29.25.

Q. Now, I consider the fourth and last postponement. To what time was the sale therein postponed? How many squares were occupied? The number of insertions, and what was the charge therefor?

A. To July 1st, 1872. It occupied 15 squares. It was inserted four times, and amounted to $33.75.

Q. Now I will ask you the entire amount of the bills rendered to B. H.

Warner on account of the publication of this notice, and the several postponements mentioned?

(Objected to by Mr. Bradley as incompetent, immaterial, and irrelevant.)

A. Two hundred and five dollars and seventy-five cents.

Q. I will ask you to state the full number of times this notice of sale and the postponements thereof appeared in the National Republican?

A. It went in thirty-two insertions.

Q. I will ask you whether Warner's business card appeared as before stated in each of these insertions, and whether it is embraced in the bills rendered therefor?

(Objection repeated.)

A. It appeared in each of the advertisements and was embraced in the bill.

Q. I will now ask you whether on this entire amount of $205.75, you allowed Warner any account whatever, a commission or rebate of 33⅓ per cent.?

(Same objection.)

A. I did, for the same reason as stated before by me.

Q. I will ask you whether you can state the cost of Warner's business card according to the charges rendered in your bill?

(Objection repeated.)

A. $17.25.

Cross-examined by Mr. Bradley:

Q. Is this commission of 33⅓ per cent. allowed to every one who advertises? If not, to whom?

A. The commission of 38⅓ per cent. is allowed to most of the auctioneers, and to no other.

Q. Is the bill of the Republican in this instance made out to the regular schedule rates for advertisements?

A. The bill is charged at the regular rates.

156 Q. In the advertisement of sales at auction, so far as your knowledge goes, is it not the universal custom to insert the name and place of business of the auctioneer as a heading thereto?

A. It has always been the custom with the National Republican.

W. H. POPE.

Subscribed and sworn to before me this 29th day of July, A. D. 1875.

F. P. B. SANDS,
Examiner in Chancery.

Complainant's case here rested by counsel.

F. P. B. SANDS,
Examiner in Chancery.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Francis P. B. Sands, an examiner in chancery in and for the District of Columbia, do hereby certify that in pursuance of the notice annexed hereto, the foregoing depositions were taken down by me and reduced to writing in the presence of and from the statements of the witnesses at the times and places designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence and that of the counsel, who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

F. P. B. SANDS,
Examiner in Chancery.

157 *Order referring the cause to the general term.*

Supreme court, District of Columbia, Oct., 1875, special term. Olin, justice.

EDWARD CLARK, TRUSTEE, ET AL.
vs.
FREEDMAN'S SAVINGS AND T. CO. ET AL. } 4260. Eq. Doc. 14.

This cause coming on to be considered upon argument and the record, it is, this 29th October, 1875, thereupon ordered that said cause be and hereby is referred to the general term, there to be heard in the first instance.

A. B. OLIN, *Justice.*

158 *Decree in gen. term.*

In the supreme court of the Dist. of Col'a, in general term, June 12, 1876.

EDWARD CLARK, TRUSTEE,
vs.
FRANCES W. EATON ET AL. } 4260. Equity.

This cause came on to be heard before this court in the first instance in pursuance of the order of the special term of October 29, 1875, and was argued by counsel; and thereupon, upon consideration thereof, it is, this 12th day of June, 1876, ordered, adjudged, and decreed that the bill be dismissed with costs.

159 And from this decree the complainants, by their solicitor, here now, in open court, prays an appeal to the Supreme Court of the United States, and the same is allowed.

By order of the court.

Appeal bond to S. C. U. S.

In the supreme court of the Dist. of Col'a, the 29 day of June, 1876.

EDWARD CLARK, TRUSTEE, AND LOUISA McGHAN
vs.
THE COMMISSIONERS OF THE FREE'MAN'S SAVING AND TRUST COMPANY ET AL. } In equity. No. 4260.

160 Know all men by these presents that we, Edward Clark, trustee, Louisa McGhan, and James Ragen, are bound unto the above-named commissioners of the Freedman's Savings and Trust Company et al. in the sum of five hundred ($500) dollars, to be paid to the said Commissioners of the Freedman's Savings and Trust Company et al., their executors or administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by

these presents, sealed with our seals and dated this 26th day of June, 1876.

161 Whereas the above-named Edward Clark, trustee, and Louisa McGhan have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Edward Clark, trustee, and Louisia McGhan shall prosecute their appeal to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void;

162 otherwise the same shall be and remain in full force and virtue.

LOUISA McGHAN. [SEAL.]
JAMES RAGEN. [SEAL.]

Sealed and delivered in presence of—
J. G. BIGELOW.

Approved.

A. WYLIE.

163 *Clerk's certificate.*

CRERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 13th day of October, 1876.

[SEAL.]

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

(Indorsement on cover:) No. 278. Edward Clark, trustee, and Louisa McGhan, appellants, vs. The Commissioners of the Freedman's Savings & Trust Comp'y et al. Dist. Col. sup. court. Filed 19th October, 1876.

IN THE

Supreme Court of the United States.

Edward Clark, Trustee, et al., Appellants,

vs.

The Commissioners of the Freedman's Savings and Trust Company et al.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 58.

BRIEF FOR APPELLANTS

BY

SHELLABARGER & WILSON,
J. G. BIGELOW.

WASHINGTON:
JOSEPH L. PEARSON, PRINTER,
Corner 9th and D streets.
1879.

Supreme Court of the United States.

EDWARD CLARK, TRUSTEE, AND LOUISA McGHAN, APPELLANTS, *vs.* THE FREEDMAN'S SAVINGS AND TRUST COMPANY ET AL., APPELLEES.	In Equity. No. 58.

Appeal from the Supreme Court of the District of Columbia.

BRIEF OF THE APPELLANTS.

STATEMENT OF FACTS.

The material facts in the case are as follows:

On the 15th of August, 1864, Francis McGhan, now deceased, and Louisa, his wife, conveyed to complainant Edward Clark, in trust for complainant Louisa McGhan, the west 24 feet front by the depth thereof of lot 4 in square 377, situate in the city of Washington, D. C., the premises in question.—(R., p. 6.)

On the 20th of June, 1870, said Edward Clark, trustee, and the said Francis and Louisa, conveyed the same to Daniel L. Eaton, in trust, to secure to the defendant, F. S. & T. Co., the payment of the joint and several promissory note of said Francis and Louisa McGhan for $10,000, payable in twelve months from date, with 10 per cent. interest

payable semi-annually, (R., p. 8,) the said Eaton being then the actuary and secretary of the said company.—(R., pp. 2, 22, 31, 61, 66.)

The title thus conveyed to Eaton was that of a non-forfeitable lease for 99 years, renewable forever, of the said premises.—(R., pp. 26, 83.) The technical fee was then in one Loney, and was by him conveyed to defendant Bradley, June 7, 1873.—(R., p. 28.) The owner of the lease had the right, by the terms thereof, to purchase the fee at any time at twenty cents per square foot.—(R., p. 26.)

On the 1st of July, 1872, the principal of said $10,000 note, together with about $900 accrued interest, (R., p. 67,) being due and unpaid, the said Eaton, trustee, being then still actuary and secretary of the F. S. & T. Co., (R., pp. 3, 39, 83,) exposed for sale the said premises at public auction.—(R., p. 10.)

The testimony is conflicting as to whether the premises were formally and publicly struck off at said sale. For the complainants, Charles Flaesch testified that he was going to bid $15,000 for the property, but it was knocked down too quick (R., p. 35); Jesse B. Wilson, that the suddenness of the termination of the bidding surprised him; that he did not know from whom the announcement came that the property was sold to the F. S. & T. Co.; that it was not made by the crier, for he saw him (R. p. 39); Hiram W. Brelsford, that he did not think there was any formal knocking down of the property, at least he heard none, and left with the impression there had been no sale (R., p. 41); and George F. Lamborn, that there was not, that he heard, any formal knocking down of the property.—(R., p. 49.)

The amount of the last bid was $13,000, and whether made by Eaton, the trustee, or Stickney, the testimony is conflicting, but, however that is, it was so far treated as the bid of the F. S. & T. Co. by both the company and Eaton, that Eaton executed the instrument in writing, a copy of which is Exhibit "D," (R., p. 10,) dated July 1, 1872, and which is unsealed, and the certificate to the acknowledg-

ment thereof is without date.—(R., p. 11.) At what time the said instrument was executed and delivered the record does not show. It was not recorded till February 4, 1873. —(R., p. 3.)

The $10,000 note has never been surrendered, and both Eaton and the F. S. & T. Co. have wholly failed to make any accounting of the matters arising out of the sale or the trust in Eaton.

As to the value of the property at the time of the sale, Charles Flaesch testified that he was going to bid $15,000 for it, but it was knocked down too quick (R., p. 35); Jesse B. Wilson, that he thought it low at that time at $20,000 (R., p. 39); Hiram W. Brelsford, that he should think it worth $22,000 (R., p. 42); Edward Clark, that at least $20,000, July 1, 1872, and that the building itself could not be erected under $18,000 and the stable $1,000 (R., p. 44); and William Orme, that $18,000 is a pretty low estimate for the property.—(R., p. 56.) At the date of the deed of trust, June 20, 1870, it was appraised at $20,000.—(R., p. 64.)

The property was leased to the Post Office Department, June 6, 1873, by defendant Bradley, for three years, with the privilege of two more, at $4.200 per annum.—(R., p. 12.)

The testimony establishes that Francis McGhan had become excessively dissipated in his habits and neglectful of his business, and that the condition of his wife and family, at the time of the sale and for two years prior thereto, was one of extreme destitution and suffering, and this condition continued thereafter until the decease of Francis McGhan, October 27, 1874.

The record contains what purports to be a transcript of the record of a former suit in ejectment between the F. S. & T. Co., as plaintiff, and Edward Clark, Francis McGhan, and Louisa McGhan, defendants, with reference to the said premises, but it contains no proof that it is a correct transcript, nor is it shown how it got there. This transcript, if it is entitled to any credit or place here, shows that the

F. S. & T. Co. instituted a suit in ejectment in the Supreme Court of the District of Columbia, September 11, 1872, to recover of Edward Clark, Francis McGhan, and Louisa McGhan the said described premises. The declaration has two counts. The first declares that the action is to recover said premises, describing them, of which the plaintiff was lawfully possessed on the 2d of July, 1872, when the defendants entered the same and unlawfully ejected the plaintiff therefrom, and avers that the defendants unjustly detain the same from the plaintiff. The second declares that the action is to recover possession of all that certain parcel of land particularly described in the first count, and avers that the defendants unjustly detain the same from the plaintiff. And the plaintiff claims possession of said part of said lot, with the appurtenances, and costs of suit. The defendants never appeared and never answered, and judgment was given by default November 7, 1872, and a writ of habere facias possessionem issued November 25, 1872, and possession delivered to the plaintiff December 9, 1872.—(R., p. 95.)

June 9th, 1873, defendant Bradley, having on the 6th of June previous leased the same to the Post Office Department for $4,200 per annum, executed a deed of trust to John W. Alvord and George W. Stickney on said premises to secure to the F. S. & T. Co. $17,000, payable $2,400 in one year, $2,650 in two years, $2,900 in three years, $3,150 in four years, and $5,900 in five years from date, with 8 per cent. interest.—(R., p. 13.)

June 16th, 1873, the F. S. & T. Co. conveyed the premises to Bradley—consideration expressed, $18,500.—(R., p. 16.)

August 27th, 1874, defendant Bradley conveyed the same to defendant Shepherd—consideration expressed, $18,000.—(R., p. 17.)

The record shows the following payments to have been made of the purchase-money: June 16, 1873, $1,500 and the said note of $2,400 falling due one year from June 9,

1873, besides certain interest, (R., p. 24,) making an aggregate of $3,900 of the principal. And also the following amounts to have been paid as rents by the government under said lease, viz.: June 30, 1874, $4,480.86; September 30, 1874, $1,050; December 31, 1874, $1,050, and March 31, 1875, $1,050, making in all $7,630.86.—(R., p. 24.) The excess of the amount received as rents over the amount paid towards the purchase-money was $3,730.86, at the time of the commencement of this suit.

These proceedings were begun April 5, 1875, the said Francis McGhan, husband of plaintiff Louisa, having deceased October 27, 1874. The scope and object of the bill are to redeem the said premises from the said deed of trust to Eaton; to have the said instrument in writing not under seal and the certificate to the acknowledgment thereof without date from said Eaton to the F. S. & T. Co.; the said deed of trust from defendant Bradley to said John W. Alvord and George W. Stickney; the said deed from the F. S. & T. Co. to Bradley; and the said deed from Bradley to Shepherd declared null and void, vacated and set aside; to have an account taken, on the one hand of the amount due on the said $10,000 note, and on the other of the rents, issues, and profits realized therefrom during the possession of the premises by the defendants, and also all the other matters and things in the premises; and offering and tendering to pay any balance to the defendants that might be found due in an accounting as aforesaid; that the lease to the government of said premises may be decreed to inure to the benefit of the complainants, and that the title to the premises, as held by the plaintiffs prior to the said deed of trust to Eaton, may be decreed to be restored to the plaintiffs discharged of all adverse claims by the defendants.

To the bill, defendants Freedman's Savings and Trust Company, Shepherd, and Bradley make separate answers. No other defendant answers.

This cause was heard in the Supreme Court of the District of Columbia, and a decree passed the 12th of June,

1876, dismissing the bill with costs, from which the plaintiffs prayed an appeal to this court and gave the requisite bond.—(R., p. 102.)

Assignments of Error.

The following are the principal errors assigned for the consideration of the court:

I. The court erred in dismissing the bill of complainants.

II. The complainants are not estopped to maintain this suit by the said record of the former ejectment suit, and the court erred in holding such judgment to be such an estoppel.

III. The said instrument in writing not under seal, and the certificate to the acknowledgment thereof without date, from Eaton to the F. S. & T. Co., is not a deed, and did not vest in the F. S. & T. Co. the title in and to said premises; and the power, contained in the deed of trust to Eaton, to sell and convey said premises in fee simple, is not thereby well executed; and the said sale of July 1, 1872, and the said instrument in writing do not constitute a valid foreclosure of said deed of trust, nor is the equity of redemption thereby barred; and the court erred in holding such deed to be a valid execution of such power.

IV. The F. S. & T. Co. could not lawfully purchase said premises at said sale so as to cut off complainants' election to avoid the sale, either through Eaton, the trustee, nor Stickney, his assistant, nor, being a creditor armed with the power of sale, through any other agency of such creditor; and the court erred in holding such sale so made valid as a foreclosure cutting off complainants' equity of redemption.

V. There was not a proper opportunity afforded to persons desirous to purchase the property, to bid at the sale; that, had there been, the property would have brought at least $2,000 more. The price, $13,000, was grossly inadequate, and the sale took place at a most unfavorable season of the year, and under circumstances attended with great distress

and hardship to the complainant Louisa McGhan, and was so conducted as to be a sale or no sale as might afterwards suit the purposes of the defendants, or appear to their advantage. On this account the sale ought to have been set aside, vacated, and declared to stand for naught, and the court erred in not so decreeing.

VI. Defendant Shepherd is not, nor is defendant Bradley, a bona fide purchaser for valuable consideration without notice, and the court erred in holding them to be such bona fide purchasers.

VII. The court erred in not rendering a decree in favor of the complainants.

VIII. There are other manifest errors in said record.

BRIEF.

RECORD OF FORMER EJECTMENT SUIT NO ESTOPPEL.

To constitute a prior judgment an estoppel or bar to a present litigation, two things must concur, to wit: first, the parties must be the same in both suits, or parties in privity with them; and, secondly, the same cause of action must have been adjudicated in the former suit, that is, involved in the present litigation. And where an opportunity is afforded to specially plead the matter in bar, and is not availed of, the benefit of the estoppel is lost. The plea must allege every fact necessary to constitute the bar.

Lajoye vs. Princan, 3 Mo., 529.
Rich vs. Hotchkiss, 16 Conn., 409.
1 Chitty on Pleadings, pp. 213, 224, 521.
Stephens on Pleadings, pp. 316, 317.
Story Equity Pleadings, § 780.

The three several pleas of the defendants (R., pp. 20, 23, 33) do not meet the requirement of law, in that they severally fail to aver that the same cause of action was adjudi-

cated in the prior ejectment suit that is involved in the present litigation. They are, therefore, wholly insufficient. Estoppels do not arise by argument or inference.

The transcript, however, of the record of the prior ejectment suit is in the record, but it does not appear how it came there. If it is entitled to any faith it shows conclusively that the cause of action therein was the right of *possession*.—(R., p. 95.) Here the right of *property* is involved. No judgment can be had in an ejectment suit in which the right of *possession* is declared upon, and *possession* only claimed, that will bar a subsequent suit between the same parties founded upon the *right* of property.

Arnold vs. Arnold, 17 Pick., 4.
Dunlap vs. Glidden, 34 Maine, 517.
Outram vs. Morewood, 3 East, 125.
Mallett vs. Foxcraft, 1 Story, 474.
Smith vs. Sherwood, 4 Conn., 276.
Bradford vs. Bradford, 5 Conn., 127.
Green vs. Thompson, 5 Greenl., 224.

The abolition of fictions in ejectment by act of Congaess, June 1, 1870, (16 Stat., 146,) in the District of Columbia, did not abolish that action, nor convert it into a writ of right.

Hogan vs. Kurtz, 4 Otto, 773.

But no judgment of a court of law could bar these proceedings, for the reason that many of the matters and things herein involved are exclusively within the jurisdiction of a court of equity, and cannot be pleaded in a court of law.

II.

UNSEALED DEED.—DEFECTIVE ACKNOWLEDGMENT.—POWER TO SELL NOT WELL EXECUTED.—FORECLOSURE INVALID.—EQUITY OF REDEMPTION NOT BARRED.

1. The unsealed deed from Eaton to the F. S. & T. Co. conveyed no legal title, by reason of the omission of the seal.

U. S. Rev. Statutes for D. of C., §§ 446, 447.
3 Washburne on Real Property, 244.
Warren vs. Lynch, 5 Johns., 239.
Taylor vs. Glaser, 2 S. & R., 502.
Wadsworth vs. Wendall, 5 Johns. Ch., 224
Davis vs. Brandon, 1 How., (M
Long vs. Long, 1 Mon., 43.
Deming vs. Bullitt, 1 Blackf., 2
Davis vs. Judd, 6 Wis., 85.
Alexander vs. Polk, 39 Miss., 7[illegible]

A lease for ninety-nine years, renewable forever, is *land* and *not* a chattel, and to convey the title thereof a deed, duly signed, sealed, and acknowledged, is required.

U. S. Rev. Statutes for D. of C., §§ 446, 447.
Barrett vs. Barrett, 21 Md., 583.
Broham vs. Van Ness, 1 Cr. C. C., 366.

The legal title to the estate of the complainants is, therefore, still in Daniel L. Eaton, trustee, where the deed of trust of June 20, 1870, placed it.

2. No legal title to the premises passed to the F. S. & T. Co. by the unsealed deed of Eaton, for the additional reason that the certificate to the acknowledgment thereof by the notary bears no date.

U. S. Rev. Statutes for D. of C., § 442.
Downing vs. Gallagher, 2 S. & R., 455.
Heyden vs. Wescott, 11 Conn., 129.
O'Ferrall vs. Simplott, 4 Iowa, 381.

And on this account the title is still in Eaton.

3. The power contained in the deed of trust to Eaton is, upon default in the payment of the $10,000 note, to sell the said premises and to convey the same in *fee simple* to the purchaser.—(R., p. 9.) The power, it is plain, can be executed only by deed.

It is laid down in 2 Perry on Trusts, § 602*m*, that "the trustee in a deed of trust for security is subject to the same rules that govern all trustees."

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Alexander vs. Polk, 39 Miss., 737.

1 Sugden on Powers 282.

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It is laid down in 2 Perry on Trusts, § 602*m*, that "the trustee in a deed of trust for security is subject to the same rules that govern all trustees."

Whether the deed of trust to Eaton (considered under this head) has been foreclosed, must depend upon whether the power has been well executed. We apprehend the rule of law in this regard is correctly laid down by Perry on Trusts, in the following language: "The execution of a 'power requires careful consideration. If the manner of 'its execution is not pointed out, it must be executed in 'good faith, in the usual manner of doing the business to 'be done under the power; and there must be a strict ad-'herence, not only to the substance of the power, but also 'to all the formalities required in its execution by the in-'strument. These formalities and solemnities are required 'for the protection of those persons whose rights may be 'defeated by the exercise of the power, and to prevent the 'donee of the power from acting with haste and without 'proper consideration.[1] If a writing is required, a parol 'disposition would be void, although the property might 'otherwise be disposed of by parol at law.[2] If it is to be 'by deed, nothing but a deed will execute the power, even 'though it is to be executed by a married woman; and it 'must be *signed, sealed, acknowledged, delivered,* and *recorded.*[3] 'If the number of witnesses is named, that number must 'witness to the instrument that purports to execute the 'power.[4] If the consent of any third person must be had 'to the execution, such consent must appear;[5] so, if the 'deed is to be sealed.[6]"

2 Perry on Trusts, § 511*b*, citing—

[1] Hawkins vs. Kemp, 3 East, 155.
Rex vs. Anstrey, 6 M. & Sel., 324.
Holmes vs. Coghill, 7 Ves., 506.
Day vs. Thwaitis, 3 Ch. Ca., 69, 107.

[2] Thruxton vs. Atty.-Gen., 1 Verm., 340.

[3] Digges' Case, 1 Rep., 73.
Dundas vs. Biddle, 2 Barr, 160.

[4] Bath vs. Montague's Case, 3 Ch. Ca., 55, 2 Freem., 193.
Kibbett vs. Lee, Hob., 312, Ch. Ca., 90.

Doe vs. Keir, 4 Man. & Ry., 101.
Wright vs. Wakeford, 17 Ves., 454, and others.
[6]Domer vs. Thurland, 2 P. Wm., 506.

Eaton had no powers the deed of trust did not expressly confer upon him.—(Wallis vs. Thornton, 2 Brock., 422.) The deed of trust itself provides how it shall be foreclosed, viz.: by a sale and conveyance in fee simple. This means that the instrument, which purports to execute the power, shall be duly signed, sealed, acknowledged, and delivered—that it shall be a valid deed to all intents and purposes. The power can be executed in no other terms than those prescribed by the donor of the power. Strict execution of the power is required in every particular.

2 Perry on Trusts, § 602*p*.
Baldridge vs. Walton, 1 Mo., 520.
Stine vs. Wilterson, 10 Id., 75.
Smith vs. Provin, 4 Allen, 516.
Roarty vs. Mitchell, 7 Gray, 243.
4 Kent, 330.

From the foregoing authorities it is clear that the power vested in Eaton by the deed of trust to sell and convey the premises in *fee simple* is not well executed by his unsealed deed to the F. S. & T. Co., and, this being the case, it follows that there has been no valid foreclosure of the deed of trust.

4. The case standing thus, have the complainants the right to come in, pay off the debt, and redeem the property from the purchaser? The right to redeem is correlative to the right to foreclose, and is never lost until there has been a complete and valid foreclosure. The maxim, "once a mortgage always a mortgage," applies with peculiar force in this case.

Courts of equity have ever been vigilant to protect the rights of mortgagors in cases of this character, because "sales under powers in deeds of trust or mortgages are a 'harsh mode of foreclosing the rights of the mortgagor."

2 Perry on Trusts, § 602*x*.

Whether the deed of trust to Eaton (considered under this head) has been foreclosed, must depend upon whether the power has been well executed. We apprehend the rule of law in this regard is correctly laid down by Perry on Trusts, in the following language: "The execution of a 'power requires careful consideration. If the manner of 'its execution is not pointed out, it must be executed in 'good faith, in the usual manner of doing the business to 'be done under the power; and there must be a strict ad- 'herence, not only to the substance of the power, but also 'to all the formalities required in its execution by the in- 'strument. These formalities and solemnities are required 'for the protection of those persons whose rights may be 'defeated by the exercise of the power, and to prevent the 'donee of the power from acting with haste and without 'proper consideration.[1] If a writing is required, a parol 'disposition would be void, although the property might 'otherwise be disposed of by parol at law.[2] If it is to be 'by deed, nothing but a deed will execute the power, even 'though it is to be executed by a married woman; and it 'must be *signed*, *sealed*, *acknowledged*, *delivered*, and *recorded*.[3] 'If the number of witnesses is named, that number must 'witness to the instrument that purports to execute the 'power.[4] If the consent of any third person must be had 'to the execution, such consent must appear;[5] so, if the 'deed is to be sealed.[6]"

2 Perry on Trusts, § 511*b*, citing—

[1] Hawkins vs. Kemp, 3 East, 155.
Rex vs. Anstrey, 6 M. & Sel., 324.
Holmes vs. Coghill, 7 Ves., 506.
Day vs. Thwaitis, 3 Ch. Ca., 69, 107.

[2] Thruxton vs. Atty.-Gen., 1 Verm., 340.

[3] Digges' Case, 1 Rep., 73.
Dundas vs. Biddle, 2 Barr, 160.

[4] Bath vs. Montague's Case, 3 Ch. Ca., 55, 2 Freem., 193.
Kibbett vs. Lee, Hob., 312, Ch. Ca., 90.

Doe vs. Keir, 4 Man. & Ry., 101.
Wright vs. Wakeford, 17 Ves., 454, and others.
[6]Domer vs. Thurland, 2 P. Wm., 506.

Eaton had no powers the deed of trust did not expressly confer upon him.—(Wallis vs. Thornton, 2 Brock., 422.) The deed of trust itself provides how it shall be foreclosed, viz.: by a sale and conveyance in fee simple. This means that the instrument, which purports to execute the power, shall be duly signed, sealed, acknowledged, and delivered—that it shall be a valid deed to all intents and purposes. The power can be executed in no other terms than those prescribed by the donor of the power. Strict execution of the power is required in every particular.

2 Perry on Trusts, § 602*p*.
Baldridge vs. Walton, 1 Mo., 520.
Stine vs. Wilterson, 10 Id., 75.
Smith vs. Provin, 4 Allen, 516.
Roarty vs. Mitchell, 7 Gray, 243.
4 Kent, 330.

From the foregoing authorities it is clear that the power vested in Eaton by the deed of trust to sell and convey the premises in *fee simple* is not well executed by his unsealed deed to the F. S. & T. Co., and, this being the case, it follows that there has been no valid foreclosure of the deed of trust.

4. The case standing thus, have the complainants the right to come in, pay off the debt, and redeem the property from the purchaser? The right to redeem is correlative to the right to foreclose, and is never lost until there has been a complete and valid foreclosure. The maxim, "once a mortgage always a mortgage," applies with peculiar force in this case.

Courts of equity have ever been vigilant to protect the rights of mortgagors in cases of this character, because "sales under powers in deeds of trust or mortgages are a 'harsh mode of foreclosing the rights of the mortgagor."

2 Perry on Trusts, § 602*x*.

And the "equity of redemption can only be barred by 'regular proceedings according to law or according to the 'provisions and conditions in the respective deeds."

2 Perry on Trusts, § 602*d*.

The complaint is not that there has been a failure to comply with the conditions annexed to the power, but that there has been a total failure to execute the power at all, that the *sealing* of the deed from Eaton to the purchaser, the F. S & T. Co. is of the very *essence* of the execution of the power to sell and convey in *fee simple*, and that without the seal the deed is absolutely void.

Smith vs. Provin, 4 Allen, 516.

"Those who are invested with the power of transferring 'one man's property to another must pursue their authority 'with precision or what they do will be invalid."

Powell vs. Tuttle, 3 Const., 396.

"The purchaser is bound to know the full particulars and 'purpose of the power under which he purchases; and if 'he makes any mistake in the construction of the power, or 'if he does not fully inform himself, and acts in ignorance, 'he will take no title if the power is not properly executed."

2 Perry on Trusts, § 602*q*, citing—
Doolittle vs. Lewis, 7 Johns. Ch., 45.
Beattie vs. Butler, 21 Mo., 313.
Turner vs. Johnson, 7 Ohio, 216, 220.
Elliott vs. Wood, 45 N. Y., 71.
Hyde vs. Warren, 46 Miss., 13.
Richmond vs. Hughes, 9 R. I., 228.
Wallis vs. Thornton, 2 Brock, 422.
Demall vs. Morgan, 5 Cal., 417.
Wilson vs. Troup, 7 Johns. Ch., 25.
Ormsby vs. Tarascon, 3 Litt., 410.
Williams vs. Otey, 8 Humph., 518.
Walker vs. Brungard, 13 Sm. & M., 723.

"If the power is not executed as it is given in all partic-

'ulars, it is not executed at all, and the mortgagor still has 'the equity of redemption."

2 Perry on Trusts, § 602*p*, citing—
Greenleaf vs. Queen, 1 Pet., 138.
Waldron vs. Chastney, 2 Blatch., 62.
Gunter vs. Jones, 9 Cal., 643.
Taylor vs. Atkins, 1 Burr., 60.
Ormsby vs. Tarascon, 3 Litt., 405.
Hawkins vs. Kemp, 4 East, 410.
Crosby vs. Houston, 1 Tex., 225.
Bush vs. Stamps, 26 Miss., 463.
Gray vs. Howard, 14 Mo., 341.
Foster vs. Goree, 4 Ala., 428.
Beebe vs. DeBaum, 3 Eng., 510.
Stine vs. Wilkson, 10 Mo., 75.
Baldridge vs. Waltron, 1 Id., 520.
Smith vs. Provin, 4 Allen, 514.
Griffin vs. Marine Co., 52 Ill., 130.
Elliott vs. Wood, 53 Barb., 285.
Hall vs. Towne, 45 Ill., 493.

"If a power of sale in a mortgage, or deed of trust in 'the nature of a mortgage, is not regularly executed, the 'right of redemption is not foreclosed or barred; but the 'mortgagor may still redeem the estate of the purchaser. 'Therefore it is said that a bill in equity cannot be sustained 'to set aside such sale, but that the bill should be framed as 'for a bill to redeem. If the sale is relied upon as a bar 'to redemption, its regularity according to the power must 'be shown."

2 Perry on Trusts, § 602*cc*, citing—
Goldsmith vs. Osborne, 1 Edward Ch., 560.
Schwarz vs. Sears, Walk. Ch., 170.

"So the execution of the deed under the power must 'correspond to the power. If the trustee is to execute the 'deed as the attorney of the debtor, he cannot execute in his 'own name. The original purchaser under the power will 'be held to have notice of all the irregularities of the pro-'ceedings of sale and his deed will be void."

2 Perry on Trusts, § 602*p*.

The purchaser, the F. S. & T. Co., was bound to know that the power, under the execution of which it claims to hold, could be executed only by a deed duly signed, sealed, acknowledged, and delivered, (2 Perry on Trusts, § 602*g*,) and the instrument purporting to execute the power being wholly ineffectual for that purpose, and the purchaser having taken no steps to have that instrument corrected and reformed so as to be a valid execution of the power, the complainants, the debtors, the mortgagors, have the right in equity to take advantage of these defects in the execution of the power, and, offering to do equity, by tendering the balance that may be found due upon an accounting, together with all interest, costs, and expenses, have the right to redeem the property from said deed of trust by paying off the debt against it.

It is, therefore, submitted that the court below erred in holding that the deed of trust to Eaton had been duly foreclosed, and the power therein contained to sell and convey the premises to the purchaser in fee simple, well executed by Eaton's unsealed deed, with its defective acknowledgment, to the F. S. & T. Co., and that the equity of redemption in the plaintiffs was thereby barred. On the contrary, we submit that the right of the complainants to pay off the $10,000 debt and to have their title released from the lien and reconveyed to them, is unimpaired by the ineffectual attempt to execute the power contained in the deed of trust, and that, independently of all other equities and rights they may have by the record, the complainants are entitled in equity, under this feature of this case, to have a decree in their favor.

III.

F. S. & T. Co. a Creditor, armed with the Power of Sale, not Capable of Purchasing at the Sale.

1. It will not be denied that the F. S. & T. Co. could not purchase the property at the sale through the agency or bid of Eaton, the trustee. It is too well settled to require au-

thority that a trustee can neither purchase at his own sale for himself or as the agent of another, so as to deprive the *cestui que trust* of his election to have the sale avoided in equity. The inquiry, in this respect, is limited to the ascertainment of the fact whether he did bid the property in as the agent of the F. S. & T. Co. The testimony is conflicting. Charles Flaesch testified that "the gentleman who sat in the buggy and who made the bid for the house was not Mr. Stickney" (R., p. 35); Jesse B. Wilson, that "he (Eaton) was sitting in a buggy which was standing in the street" (R., p. 39); Hiram W. Brelsford, that he "was there when the crying was begun," and "there until it was concluded." * * "Mr. Eaton was sitting in a carriage directly in front of the premises." * * "After crying for a few minutes they all dropped out, leaving but two, Mr. Smith and Mr. Eaton," (R., p. 41,) and in answer to the question whether Eaton's was the last bid, said "it was" (R., p. 42); and B. H. Warner, (defendant's witness,) the auctioneer, in his examination-in-chief, in answer to the question "Did he (Eaton) bid the property off?" answered "I don't know whether it was his reserve bid or not. If he is directed by the party secured, he has the right to put in a bid for them, but whether he bid in the property or not I don't know."—(R., p. 86.) The testimony of George W. Stickney and E. J. Sweet is to the effect that Stickney bid the property in for the F. S. & T. Co.—(R., pp. 60, 78.) The attention of the court is called to the testimony of Sweet, the crier, at page 78, where he testifies in his examination-in-chief, that his memorandum will show who bid the property in—will show the disputed fact—and that the defendants failed to produce that memorandum, or the record of that sale as kept in the office of the auctioneer, which would have settled all controversy on this question. This was the best evidence. Why was it not produced? It was in the possession of the defendants. It is strongly suspected that the memorandum, made at the time of the sale, if produced, would show that Eaton and not Stickney bid the property in.

2. If the court should find, however, from the evidence, that Stickney and not Eaton bid the property in for the F. S. & T. Co., then the question arises, Does this place the F. S. & T. Co. in a better predicament? In determining this question a court of equity will scrutinize the peculiar relations existing between Eaton and Stickney at the time of the sale, their relations to the F. S. & T. Co., and take into consideration all the facts and circumstances attending the sale; and if it shall appear that the bid of Stickney was made by the authority and direction of Eaton, and in his presence, and while Stickney was under his control in the very subject-matter of the purchase by the F S. & T. Co. of this property, the court will treat such bid as the bid of Eaton.

What, then, were these relations? And what were the facts and circumstances surrounding the sale? Eaton was the uncle of Stickney.—(R., p. 63.) Eaton was the actuary and secretary of the F. S. & T. Co.; as actuary his duties were the same as those of cashier of any bank.—(R., p. 64.) Eaton was the principal business man of the F. S. & T. Co. —(R., p. 65.) Eaton received a salary as actuary and secretary of the F. S. & T. Co. of $4,000 or $4,500 per annum.—(R., p. 66.) Stickney, at the time of the sale, was the assistant actuary and secretary, executing, along with Eaton, one and the same office—that of actuary.—(R., p. 66.) Stickney was paid a salary of $2,000, and was subject to the order and control of Eaton.—(R., p. 66.) Eaton and Stickney rode together to the sale from Howard University (R., p. 63), and Stickney had not received any instructions before going to the sale to bid the property in for the F. S. & T. Co. He was there at the sale without any instructions in the premises.—(R., p. 67.) The sale transpired under these circumstances. The F. S. & T. Co. is the purchaser through the bid of Eaton's deputy. Did the deputy, in the presence and under the eye of his chief, of his own motion assume to act in behalf of the F. S. & T. Co. in a transaction of so great importance and interest to

that bank? Is not this rather in the eyes of the law a sale by the actuary through the actuary to the F. S. & T. Co.? Eaton appeared at the sale in a two-fold character—that of trustee and actuary. The law will not suffer him in this transaction, in which the F. S. & T. Co. is pecuniarily interested, to discard his character of actuary and to make himself a stranger to that bank. It was his bounden duty at that sale to exercise his best discretion for that institution. His salary of $4,500 per annum was for that very consideration. Not to have exercised his very best judgment in behalf of the F. S. & T. Co. would have been a dereliction of his duty to his employer, and a breach of the confidence and trust reposed in him by the bank. See—

Torrey vs. Bank of Orleans, 9 Paige Ch., 560.

Therefore, we submit that, in view of the peculiar relations that existed between Eaton and Stickney, and with the F. S. & T. Co., and all the facts and circumstances attending the sale, the bid of Stickney at the sale was, in the eyes of equity, the bid of Eaton, the trustee, and that the sale of July 1, 1872, is, on this account, void, or voidable, at the election of the mortgagors.

3. In view of all the facts and circumstances, as detailed above, the question now arises, Was the F. S. & T. Co. such a creditor as to be capable of purchasing at the sale? We think not. The Freedman's Bank, the creditor, was secured by a deed of trust to Daniel L. Eaton, its principal executive officer, which contained this provision: "And upon this 'further trust, that, upon default being made in the payment 'of said promissory note, or the interest thereon when due, 'or any proper cost, charge, commission, half commission, 'or expense in and about the same, then, and at any time 'thereafter, to sell the said piece or parcel of ground and 'premises at public auction, upon such terms and conditions, and at such time and place, and after such previous 'public advertisement as said party of the second part, or 'his heirs, in the execution of this trust, shall deem advan-

'tageous and proper, and to convey the same in fee simple 'to the purchaser."—(R., p. 9.)

It will be observed that the power of sale is thus vested *absolutely* in Eaton upon default in the payment of the debt, the interest thereon when due, or any proper cost, &c.

The sale of July 1, 1872, was by the judgment of Eaton. By what standard did he judge? Was it not by the interest of a cestui que trust, to whom he could not make himself a stranger? We are thus met at the threshold of the inquiry with this conflict of duty and indivisibility of interest. Eaton, as the trustee and agent of the complainants for the sale of this property, was bound to sell it for the highest possible price; while, on the other hand, as the actuary of the F. S. & T. Co., he was in duty bound to sell it to that company for the least possible price—to make for it the best possible bargain. To deal thus by that bank was a duty, an obligation, imposed upon him by the very nature and character of his employment, and for which he received the large salary of $4,500 per annum. Where the interest of the bank lay, there the interest of Eaton was bound to be. He was bound to regard the interest of the F. S. & T. Co. as though it were his own. In this transaction, therefore, he is placed in the inconsistent position, that if he discharge his duty to the complainants he must be remiss in his obligations to the purchaser, the F. S. & T. Co. His position required him to subserve, at the same time, two parties whose interests were in conflict—a position wholly untenable in equity. "Vendor vendit quam maximo potest, emptor emerit quam minimo potest."

Again: The F. S. & T. Co. was a creditor "*armed with the power of sale*," and was, therefore, incapable of purchasing at the sale. The power was vested in Eaton, the principal officer of that bank. Eaton was charged, by the very nature of his office, with the duty of collecting this debt, and whatever act he did with that end in view was the act of the bank, which could only act by agent. The case is the same as though the note had been made payable to the

order of Daniel L. Eaton, actuary, &c., in which case the ownership would be all the same in the bank. In other words, a power of sale in Eaton, actuary, is a power of sale in the F. S. & T. Co. Eaton must be considered for this purpose as the bank. And it cannot be successfully denied that a power of sale vested in the agent of a corporation upon default in the payment of a debt due to the corporation, is, in effect, a power of sale vested in the corporation itself. The facts in the case place the F. S. & T. Co. in the predicament of a creditor armed with the power of sale purchasing at the sale. The principle that forbids a trustee to purchase at his own sale, or a mortgagee in a mortgage with power of sale, applies with all its force in the present case.

It is laid down in Wade vs. Harper, 3 Yerg., 383, that "where a person, for whose benefit a deed of trust is exe-'cuted upon real and personal estate, has the power given 'him to direct and control the sale, the time, manner, and 'terms upon which it is to be made, he is not permitted to 'purchase the legal title, however innocent and free from 'fraud the purchase may be."

So, also, it is said in 1 Leading Cases in Equity, (3 Amer. edit.,) 211: "The better opinion would seem to be 'that the same rule is applicable to mortgagees and credi-'tors armed with the power of sale and thus enabled to 'control the disposition of lands and chattels which have 'been pledged or mortgaged to them for debts, because they 'might otherwise be gainers by buying the property them-'selves for less than it is worth and looking to the personal 'responsibility of the debtor for the residue, and should 'consequently be placed beyond the reach of temptation."

See—

Michaud vs. Girod, 4 How., 503.

1 Leading Cases in Equity, (3 Amer. edit.,) 209, 218, 219.

Hyndman vs. Hyndman, 19 Vt., 1.

Benham vs. Rowe, 2 Cal., 387.

Slee vs. Manhattan Co., 1 Paige, 48.

For these reasons the sale of July 1, 1872, ought to be declared null and void and the deed to the F. S. & T. Co. vacated and set aside, and the complainants allowed the right to redeem the estate from the debt.

IV.

NOT A PROPER OPPORTUNITY AFFORDED FOR BIDDING AT THE SALE; HAD THERE BEEN, $2,000 MORE WOULD HAVE BEEN BID.—THE PRICE, $13,000, GROSSLY INADEQUATE.—SALE MADE IN A MOST UNFAVORALE SEASON OF THE YEAR.—IT WAS UNFAIRLY MADE AND CONDUCTED IN A FAST AND LOOSE MANNER.—IT IS ATTENDED WITH GREAT HARDSHIP TO COMPLAINANT LOUISA MCGHAN.

1. Charles Flaesch testifies that he went to the sale for the purpose of purchasing the property, but it was knocked down too quick. He was going to bid $15,000, and that he had the means to pay for it at that time in government bonds.—(R., p. 35.)

There is no question that the property sold for $13,000, and yet here is a witness who had the means to purchase in United States bonds, and would have bid $2,000 more if the property had not been "knocked down too quick." What the witness meant by "knocked down" is explained on the following page, where he says: "The 'auctioneer did not mention the name of the person to 'whom the property was knocked down; he merely made 'a sign to the gentleman in the buggy." Jesse B. Wilson testifies that the "suddenness of the termination of the bidding surprised me."—(R., p. 39.) Hiram W. Brelsford testifies that "I do not think there was any formal 'knocking down of the property, at least I heard none, and 'I left with the impression that there had been no sale." And again, "that the sale came to an abrupt termination without any formal knocking down of the property."—(R., p. 41.) George F. Lamborn testifies that "it seemed to 'be just a dying out, kind of stopping—that there was no 'sale."—(R., p. 49.)

The testimony of these disinterested witnesses, we think, abundantly establishes a failure to afford a proper opportunity for persons desirous to purchase the property to bid at the sale, and that an actual loss to the complainant of $2,000 was thereby sustained.

2. Was the price, $13,000, grossly inadequate for the property? Defendant Bradley leased it to the Post Office Department, June 6, 1873, for three years, with the privilege of two years more, at an annual rental of $4,200.—(R., p. 12.) Jesse B. Wilson testified that "I thought it low at that time at $20,000."—(R., p. 39.) Hiram W. Brelsford testified that "I should think it was worth $22,000." Edward Clark, that he believed "it worth at least $20,000 on 'the 1st day of July, 1872, the building itself could not be 'erected under $18,000." * * * "I do not include the 'other house, the stable building, &c., which a thousand 'dollars, I think, would cover."—(R., p. 44.) William Orme, that "its value on the 1st of July, 1872, I should 'judge, was about $18,000. I think that a pretty low esti-'mate for the property. It has a good stable, worth from '$1,500 to $2,000."—(R., p. 56.) The property was appraised June 20, 1870, by the F. S. & T. Co., at $20,000.—(R., p. 64.)

The testimony, we submit, shows the property to have been worth at least $20,000 on the day of sale, and that the price, $13,000, for which it sold, was at a needless sacrifice of $7,000 to the complainants.

3. It requires no proofs to show to a court of equity that July is an unfavorable time for an advantageous sale of property of this value and character. It is a fact, publicly known, that at this season of the year a very considerable proportion of those persons who are likely to bid upon such property are away from the city of Washington, and that it is therefore the most unsuitable month in the entire year to expose such property to a forced sale.

That in an appeal to a court of equity, in a case like the present, asking for leave to redeem as against a harsh and

inequitable exercise of a trustee's power of sale, such circumstances as those just named are legitimate grounds for relief is most abundantly settled, as will appear by the authorities cited below.

At the risk of some repetition, we venture to conclude this brief with some pages from a former brief in this case.

V.

Shepherd and Bradley not bona fide Purchasers.

That no plea of *bona fide* purchaser can be here successfully set up against this, our right, to redeem, is shown by the following considerations:

1. The F. S. & T. Co., at the time of its attempted conveyance to Bradley, had no legal title to our perpetual lease, but only such a contract for a title as can be proved by Eaton's unsealed deed to the bank; hence it had nothing to convey to Bradley except such equitable title as the bank then held, subject to our higher equity, to wit, the equity of redemption and the equities growing out of the circumstances connected with the sale on the first day of July, 1872.

That the owner of a mere equitable estate can convey no higher title than he has, and that the purchaser from him must take notice of all equities standing against the equities of his vendor, is laid down in the following words:

2 Leading Cases in Equity, page 72.

"In like manner the purchaser of an equitable estate or interest must stand or fall in equity by the estate of the seller, and cannot rely upon *bona fides* and the expenditure as a ground for protection against a prior or better right or equity. His conscience may be clear, but he is presumed to have bought with full knowledge of the rule, which throws the risk of a purchase on the purchaser, and he must submit to the consequences of his ill fortune or want of due care and diligence; * * and that the purchaser of an equity who knows or has the means of know-

ing the nature of his purchase, must submit to the title under which a vendee is measured and limited by that of the vendor." See—

Daniel vs. Hollingshead, 16 Geo., 196.
Brown vs. Wood, 6 Richardson's Equity, 154.

And especially—

Shiras vs. Craig, 7 Cranch, 48.
Boone vs. Chiles, 10 Peters, 177.

We call especial attention to—

2 Story Equity, sec. 1,502.
Halleck vs. Collins, 10 Howard, 174.
Vater vs. Hine, 7 Peters, 253.
Perry on Trusts, 219, and cases cited in note 4, p. 192.

Also the following:

Villa vs. Rodregues, 12 Wallace, 323.
And cases cited on page 338.

2. To constitute one a *bona fide* purchaser, the purchase-money must have been paid. The language of the Supreme Court U. S., 12 Wallace, 338, is, "the doctrine invoked (bona fide purchases) has no application where the rights of the vendee lie in an executory contract. It applies only where the legal title has been conveyed and the purchase-money has been fully paid." See further as to the necessity to the actual payment of the purchase-money, in order to constitute bona fide purchaser, sec. 221, Perry on Trusts, and the numerous cases cited in the notes on that page; also see 2 Leading Cases in Equity, pages 116, &c.; also 12 Peters, pages 11 and 27.

3. Bradley and Shepherd are conclusively presumed to know the state of the title of the F. S. & T. Co. at the time of their alleged purchase from the bank, because the status of that legal title is required to be a matter of public record, and was in fact, and the principles of public policy upon which these registration laws are founded raise the conclusive presumption against Bradley and Shepherd that they had notice of the defects of the deed from Eaton to

the F. S. & T. Co., and that the bank held at best but a contract for a deed. As to this, see acts of Congress above cited; also the authorities cited in 2 Leading Cases, pages 178–9, 180, and 181.

VI.

Shepherd Cannot Enforce Specific Performance.

Since the unsealed deed to the F. S. & T. Co. is at best but a contract for a deed, and since Bradley and Shepherd bought with notice of our equities furnished by the records, as above shown, therefore he cannot compel us, by a decree for specific performance, to part with our legal title to our perpetual lease, as such legal title is still held by our trustee, because of the rule which is stated in these words in the last of section 218, Perry on Trusts: "But a purchaser of an equitable interest only, although for a valuable consideration and without notice, cannot prevail against a legal title. In law the legal title must always prevail; and in equity the legal title will prevail if the equities are equal." And see the numerous cases cited in note 1, page 192, Perry on Trusts.

Again: The conveyance to Shepherd of our legal title to this perpetual lease cannot be specifically enforced in equity, because of the principle that courts of equity never will actively intervene to compel the holder of the legal title to convey the same, when, under all the circumstances, it would be inequitable to do so. For the authorities on this point see—

Griffin vs. Cunningham, 19 Grattan, 571.

Hilliard on Vendors, pp. 444 and 445, and cases cited in note 3, section 176, Perry on Trusts; also sections 750 and 769. Story's Equity Jurisprudence.

But the unsealed deed of Eaton to the F. S. &. T. Co. is not even a valid contract for a deed, simply because, as against our equity of redemption, he had no power, as our

trustee, to make an executory contract which would cut our equities off. By the deed of trust which Eaton held from us he was empowered to cut off our equity of redemption in *no* other way than as the deed of trust authorized him to cut it off, to wit, as the instrument expressly says, *by a conveyance in fee simple.* Therefore, self-evidently, he cannot cut it off by an unsealed contract for a deed, and, hence, such unsealed contract has no efficacy and can be made the predicate for no decree for specific performance by which our equity of redemption is to be destroyed. The doctrine that Shepherd could help out his equity by buying in from Loney the reversion or technical fee, has *no earthly* application to this case. This is so, because that doctrine *only* applies where the ownership of the *full title* is the subject of litigation. In this case *nothing* is in litigation except the *legal title* to the perpetual, non-forfeitable lease. We do not ask in this case to get away from Shepherd the estate he bought of Loney. It is wholly a distinct and separate estate from the perpetual lease, the *two* having been carved out and made *separate* by the terms of the original lease in 1816, referred to in the pleadings. Hence, his buying it in gives him solely the separate estate which he bought, *no more, no less,* and, hence, by the express terms of said lease of 1816, we, as the owners of the perpetual lease, instead of having our lease destroyed by Shepherd's purchase, have a right to compel him to convey to us what he bought of Loney at twenty cents per square foot. In a decree in this case the court may, if Mr. Shepherd so desires, and the court should think it equitable, compel us to reimburse him for what he has paid Loney, and ourselves take the estate which he derived from him.

VII.

Sale of July 2, 1872, Invalid.

Wholly independently of right of recovery, as shown by what we have now gone over, we have in equity the right

to have this property again exposed for sale, or what is the same thing, the right to redeem it by paying off all equitable charges against it. This is so because the bank in consenting to loan its money upon a deed of trust containing *a power of sale* in its *chief executive officer*, thereby became in equity *armed* with a *power* of sale, and the law is, that a trustee purchasing at his own sale, takes the property, if at all, subject to the election of the *cestui que trust* to redeem the property by reimbursing his trustee what he has paid, or to have it again put up and exposed to sale. For the immense number of cases in which this doctrine is laid down, see 1 Leading Cases in Equity, pages 209, 218, and 219 (Wallace & Hare's Notes). It is no where more strongly stated than in Michoud vs. Girod, 4 Howard, 503; (16 Curtis, 190,) quoting from Sir Edward Sugden, the Supreme Court say: "It may be laid down as a general proposition that trustees, agents, commissioners of bankrupts, assignees of bankrupts, solicitors to the commission, auctioneers, creditors who have been consulted as to the mode of sale, or any person, who by their connection with any other person, or by being employed or concerned in his affairs, have acquired a knowledge of his property, are incapable of purchasing the property themselves, except under restraints which will be shortly mentioned * * * * where a person cannot purchase an estate himself he cannot buy it as the agent for another."—(pp. 193, 194, 16 Curtis.) The court add, "It makes no difference in the application of the rule that a sale was at public auction bona fide and for a fair price. * * * * The inquiry is in such a case, not whether there was or was not fraud in fact, the purchase is void and will be set aside at the instance of the *cestai que trust* and a re-sale ordered on the ground of temptation to abuse, and of the danger of imposition inaccessible to the eye of the court." We beg that the court will carefully examine this entire opinion, which is an exhaustive review of the authorities, and has effectually settled the law upon the points we have quoted from this opinion for all federal

courts, until it shall be reversed by the Supreme Court itself. It will be seen that "*creditors*," or any person who by their connection with any other person or by being employed or concerned in his affairs, have acquired knowledge of his property, are *incapable* of *purchasing* the *property themselves*. In this predicament, our creditor, the bank, was in the highest sense. It was armed with the power of sale because that power of sale was in its chief executive officer. To this holding of the Supreme Court we now add the following from 1 Leading Cases in Equity, (3d American Edition,) p. 211: "The better opinion would seem to be that the same rule is applicable to mortgagees and creditors armed with the power of sale, and thus enabled to control the disposition of lands and chattels, which have been pledged or mortgaged to them for debts, because they might otherwise be gainers by buying the property themselves for less than it is worth, and looking to the personal responsibility of the debtor for the residue, and should consequently be placed beyond the reach of temptation."

See Hyndman vs. Hyndman, 19 Vt., 9.
Shea vs. Manhattan Co., 1 Paige, 48.
Hoyt vs. Martinesee, 2 Smith (C. A.), 231.

That in the view of a court of equity dealing with trusts and trust sales of this character, the cashier or actuary of a bank cannot (as to the business of the bank entrusted to his charge by virtue of his office, such as in this case, the collection of a debt owing to the bank as to which he had duties to perform as its officer) be a separate person from the bank is self-evident in the very nature of the case. He acts as the bank, which can only act by agent, in collecting this debt for the bank, precisely as he would do if the deed of trust had been made directly to the bank instead of himself. But this self-evident identity of the bank and its chief executive officer, in matters under his control as officer of the bank, is declared by the highest authority in the country. In Torry vs. Bank of Orleans, 9 Paige

Ch., 560, it will be seen that the court held that Clark, the cashier of the bank, could not, by possibility, in a court of equity, make himself a "stranger" to the bank in regard to bank business, even so far as to be able to purchase at a public sale, judicially made, over which he had no control as the seller, neither for himself nor for the bank. The court held that he was not a "stranger" to the bank, but was identical with it; that he could not buy on any account; and they set his purchase aside. We ask of the court careful scrutiny of this case.

Therefore, the power of sale in this case being in the bank by being in its chief officer, who, in equity, is identical with the bank touching the subject-matter of collecting this bank debt, the bank was incapable of purchasing at this sale, either by the bid of Eaton, or Stickney, or anybody else. It is, therefore, immaterial whether Eaton or Stickney bid it off.

But, again: Another application of the same principle of the *identity* in equity of the chief executive officer of a bank with the bank itself in matters of this sort is asserted in the case of Wade vs. Harper, 3 Yerger, 383, cited in 1 Leading Cases in Equity, page 214. The doctrine of that case is expressed in Hare & Wallace's Notes, on page 214, last cited, in these words: "Where a deed of trust for the payment of a creditor was made, authorizing the trustee to sell at the request and option of the creditor, it was held that the creditor could not purchase."

It surely cannot be denied that Eaton, as the officer of the bank, was under the authority of and bound to obey the commands of the board of trustees of the bank, to which this debt was owing. That he was so subject was proved by the oath of Stickney and the charter of the F. S. & T. Co.; being so subject to the *request* and *option* of the bank, which was the creditor, and bound to obey the commands of the bank, this is a case where the creditor's *option* and *request* controlled the time and circumstances of this sale; and, in *point of fact*, the advertisement of the sale,

which is a part of the *record* in this case, *expressly* declares that the *sale* was made at the *request* of the creditor.

Clearly, therefore, this case is brought expressly within the doctrine of Wade vs. Harper, 3 Yerger, 383, above cited, where a deed of trust for the payment of a creditor was made, authorizing the trustee to sell at the request and option of the creditor, it was held that the creditor could not purchase. The creditor having purchased in this case, the purchase is subject to our option to redeem. Therefore, wholly independently of the other ample grounds for recovery in this case, we are entitled to redeem this property, because the sale was one which we, as the *cestui que trust*, have a right to declare void, because made by a creditor holding a power of sale attempting to purchase at his own sale.

VIII.

Laches.

That the complainants are guilty of no laches in the prosecution of this suit is so self-evidently plain, in view of all the facts and circumstances surrounding the case, that it would seem almost improper to cite authorities or to offer argument. We invite, however, the notice of the court to the fact that Francis McGhan died Oct. 27, 1874, and the plaintiff, Louisa McGhan, his widow, brought this action the fifth day of April following. From what has been said already, the court can see that our position is that the relation of trustee and cestui que trust still exists between plaintiff and the F. S. & T. Co., the deed of trust having never been foreclosed, and that time can work no bar to the equity of redemption while such relations exist, we cite as authority, Perry on Trusts, section 228. But assuming that the relation of trustee and *cestui* trust does not now exist, then this action is not barred by lapse of time, as is clearly shown by Perry on Trusts, sections 229 and 230, and the numerous cases there cited. And upon

this point the court is referred to the case of Michoud vs. Girod, 4 Howard 561, before cited; also 1 Leading Cases, pages 207, 218, and 219. "Independently of circumstances, equity usually adopts as a bar to the assertion of such a trust, the period which bars a title at law, &c."

IX.

The Great Hardship of the Case.

The sale took place when the plaintiff, Louisa McGhan, was sick and in a helpless condition, and when her husband was an imbecile from long and habitual intemperance, a fit subject, according to the evidence of Dr. Riley, for the insane asylum. The property sold was the property of Mrs. McGhan, who in no way was benefited by the loan of $10,000. It cost in 1864 over $28,000, and is all she has in the world to support her large family of small children with. It sold at a great sacrifice—$7,000 less than its cash value. The F. S. & T. Co. still hold her note and have never accounted for the proceeds of the sale, and come now into court with large bills of costs of sale, that are shown to be excessive and fraudulent by one-third of their amount.

In connection with this question of laches in bringing this action, and tendering redemption, and also as throwing light upon the subject of the consequences in equity of the circumstances of hardship growing out of the inadequate price at which the property sold, and the other facts proved about the character of the sale, we wish to remind the court that the circumstances of distress of the *cestui que trust* are, in a court of equity, a sufficient excuse for delay. —(See Leading Cases in Equity, third American edition, page 207; Gregory vs. Gregory, Coop., 201; Roche vs. O'Brien, 1 B. & B., 342.)

The office of all that part of the testimony showing the distress and helpless condition of the family of the *cestui que trust* and the coverture of Mrs. McGhan at the time

of the sale, the inopportune time of the sale, the great sacrifice in price, the *fast* and *loose* way in which the sale was closed, and in which it was left by the failure to surrender the $10,000 note, and to account, is two-fold. One office of this testimony is to show that there has been no laches in bringing this suit; the other office is to show that it would be inequitable to deprive the *cestui que trust* or her trustee, Eaton, of the legal title to the perpetual lease, or to cut off the equity of redemption under all the circumstances of this pretended sale, because, even if it be granted that this is a case where the bank might purchase, although the power of sale was virtually in the bank, by reason of its being in its chief executive officer, yet it is a case where the sale was attempted to be made by such chief officer, to his own employer, the bank. It is, therefore, a case to be scrutinized in a court of equity with, at least, as much vigilance as where a trustee attempts to purchase from his *cestui que trust*, and to be set aside if the slightest hardship or unfairness attaches. The rule in courts of equity in such class of cases (even where the sale is not invalid upon the independent grounds we have above established) would set the sale aside in this case upon the ground of hardship and circumstances of suspicion, to which we have last above alluded.—(1 Leading Cases, p. 220.) The authority lays down the rule applicable to a purchase by a trustee from a *cestui que trust* in these words: "But all such transactions are scanned in a court of equity with the most searching and questioning suspicion, and will not be sustained unless they fully appear to have been in all respects fair and candid and reasonable. The trustee must show that he took no advantage of his situation, that he gave to his *cestui que trust* all the information which he possessed or could obtain upon the subject; that he advised him as he would have done in relation to a third person offering to become purchaser, and that the *price* was *fair* and *adequate*, and the *onus* of proving all this is upon the trustee." The authority adds:

"These principles apply to all cases where confidence is reposed; to agents, attorneys, solicitors, guardians, * * * to every one, in short, who has entered into a fiduciary relation or assumed an obligation, by contract or otherwise, towards another, which it would be a breach of trust and confidence to violate."—(1 Leading Cases Eq., 225.) Hence, manifestly, since the bank had elected to make its own officer the trustee to sell in this case, and had thus assumed the relation of trust towards the *cestui que trust*, Mrs. McGhan, it is brought under the rule of equity which we have just quoted, even if it be granted (which we deny) that the bank was not absolutely disqualified from making the purchase at all.

SHELLABARGER & WILSON,
J. G. BIGELOW,
For Appellants.

Supreme Court of the United States.

No. 58.—October Term, 1879.

Edward Clark, Trustee, &c., Appellant,

vs.

The Commissioners of the Freedman's Savings and Trust Company et al., Appellees.

BRIEF FOR APPELLEES.

ENOCH TOTTEN,

Counsel for the F. S. & T. Co. and Commissioners.

Joseph L. Pearson, Printer, 9th and D streets, Washington.

Supreme Court of the United States.

OCTOBER TERM, 1879.

EDWARD CLARK, TRUSTEE, &c., APPELLANT,
vs.
THE COMMISSIONERS OF THE FREEDMAN'S SAVINGS AND TRUST CO. ET AL., APPELLEES.
No. 58.

BRIEF FOR APPELLEES.

This is an appeal from a decree of the Supreme Court of the District of Columbia.

STATEMENT OF THE CASE.

On the 20th day of June, 1870, the complainant Clark, as trustee, and the complainant Louisa McGhan, as beneficiary, owned a leasehold estate in the premises which are the subject-matter of the controversy in this cause. This property was owned in fee by John P. VanNess and his wife, who, in 1816, (26, 83,) made a lease thereof to Joseph Gales, Jr., for the term of ninety-nine years, renewable forever, reserving an annual rent of one hundred and twenty-two dollars, with covenants for the payment of taxes, for re-entry on default, and for the purchase of the fee at the rate of twenty cents per square foot. This leasehold interest was owned by the complainants. On the 20th day of June, 1870, the complainant Louisa McGhan and her husband being indebted to the Freedman's Savings and Trust Company in the sum of ten thousand dollars, to secure the payment thereof executed a deed of trust on

the premises, by which they conveyed the said estate to Daniel L. Eaton, with the ordinary provisions of sale on default in the payment of the debt, interest, or costs.—(8.)

Default having been made in the payment of the debt, the trustee advertised the property for sale (9), and on the 1st day of July, 1872, sold it to the Freedman's Savings and Trust Company for the sum of $13,000. A conveyance was made by the trustee to the Trust Company in pursuance of this sale, which conveyance bears date on the 1st day of July, 1872, but the scroll for a seal appears to have been omitted, although the attesting clause contains the declaration that the trustee "hath hereunto set his hand and *seal*." It appears also upon the face of the instrument that it was "signed, sealed, and delivered" by the grantor in presence of the subscribing witness. The certificate of acknowledgment made by the notary is without date. These two circumstances are set out as grounds of complaint in the bill.

At the time of the sale the house was in an untenantable condition (79, 81, 82) and a large sum was due for taxes assessed upon the property. The officers of the Trust Company immediately after the sale expended large sums of money for repairs on the property, for taxes, and expenses of sale, which, with the original debt and accrued interest, swelled the purchase price of the property beyond seventeen thousand dollars. The fee-simple title to the property was also purchased by the company for the sum of eight hundred dollars.

On the 11th day of September, 1872, an action at law was instituted by the Freedman's Savings and Trust Company in the Supreme Court of the District of Columbia, to oust the complainants and Francis McGhan, the husband of Louisa McGhan, from the property. No appearance or defence was made in that suit, and on the 7th day of November, 1872, a judgment was rendered that the plaintiff "recover the property" in question, from the defendants, together with the possession thereof; and upon this judgment

a writ of possession was issued, upon which the defendants were ousted.—(95, 96, 97.)

On the 16th day of June, 1873, the Trust Company sold and conveyed the property to Andrew C. Bradley for the sum of eighteen thousand five hundred dollars, fifteen hundred dollars of which was paid in cash, and the balance was covered by notes payable in one, two, three, four, and five years after date, with interest at eight per cent. per annum. The payment of these notes was secured by a deed of trust on the property.—(12, 16, 75.) Although these deeds bear different dates, they were delivered at the same time and form one transaction.—(72, 78.)

When the negotiations for the sale were undertaken by Bradley, he was referred by the officers of the company, for information in regard to the title to the property, to Mr. Mattingly, the attorney who had been employed to acquire the title, and Mr. Mattingly informed him that when the title, then vested in Mrs. Loney, (who seems to have inherited the original title) should have been purchased, the title of company would be a good one. He had no notice of the existence of any equities or informalities, or that any claims were asserted by the complainants or other persons, touching the property.—(72.)

On the 27th day of August, 1874, Bradley conveyed the property to the defendant Shepherd for the considera- of eighteen thousand five hundred dollars.—(17.)

Prior, however, to the conveyance to Bradley, the Trust Company had employed B. H. Warner, an auctioneer and real-estate broker, to sell the property; he had negotiated with the Post Office Department to rent the property at an annual rental of four thousand two hundred dollars, and intended to purchase it for himself, but upon reconsideration of the matter, concluded the responsibility was too great. He then went to Shepherd and the latter agreed to take the matter off his hands, (92, 72,) but for reasons which are unexplained, the property was conveyed to Mr. Bradley, the attorney of Mr. Shepherd, who signed the notes and

deed of trust to secure the unpaid part of the purchase-money. Mr. Shepherd was the real party in interest. Extensive alterations and repairs were made by Shepherd, at the time the property was rented to the Post Office Department.—(89.)

After all these conveyances and proceedings had been had, and more than three years after the sale had been made, these complainants exhibited their bill praying that the sale might be decreed void, and that they might be allowed to redeem. It is alleged in this behalf, (1) that Eaton, the trustee, was actuary of the Trust Company, and, therefore, not disinterested; (2) that being the trustee he bid off the property at the sale for the company; (3) that the sale was unfairly conducted, and (4) that the price was grossly inadequate.

These four charges in the bill are disputed matters of fact.

In the first place Eaton was not actuary of the company at the time of the sale, at all events, there is no proof to established that fact. The plaintiffs' own witness, who had been cashier of the Washington branch of the company, swore (45) that Stickney was actuary "during the year 1872." The sale was made July 1, 1872. The references given in the appellants' brief, for authority for the assertion that Eaton was actuary, fall short of supporting the statement. The next cause of complaint (that Eaton bought the property) has still less foundation; the evidence shows quite conclusively that Eaton did not make the bid upon which the property was "knocked down," or any other bid; it shows that Stickney did make it.—(60, 80, 86, 89.) The other charges, that the sale was unfairly made, and that the price was inadequate, are shown to be unfounded. The depositions of Smith (39), Stickney (60), Sweet (78), and Warner (86), establish the fact that the sale was a fair one. The price was a fair one; Mr. Orme, a good judge of real estate, and a witness called by the plaintiffs, estimated the property at $18,000 (56, 57); his estimate was based on a perfect title, without charges or incumbrances, and the

highest estimate put upon the property was $22,000. The sums paid by the Trust Company for taxes, ground-rents, repairs, and for the fee-simple title amounted to $4,446.20, and the amount of all the disbursements made by the company, including the debt, was $17,997.60.—(20.)

ARGUMENT AND AUTHORITIES.

The objection urged against the validity of the sale, that the conveyance made in pursuance thereof was not properly sealed, cannot be taken advantage of by the complainants, because that circumstance cannot effect them injuriously. The omission was clearly a clerical mistake. The instrument discloses the fact, beyond question, that the intention was to make and deliver a valid "deed"; these complainants are in a court of equity, and a court of equity always regards that as done which ought to be done.—(1 Story's Eq., § 64.) In a case where the statute required a "bond" from a public officer, and an unsealed instrument was taken instead, this court declared that the omission of the seal was immaterial.—(U. S. vs. Linn, 15 Peters, 290.) The worst consequences which could follow an accident of this character would be confined to a proceeding in equity to compel the grantor or his heirs to perfect the conveyance. It was only an accident or mistake, and a bill will always lie to correct an accident or mistake. The instrument is, notwithstanding the omission, an effective paper entitled to record, and of the existence of which all persons are chargeable with notice. The provisions of the second section of the act of 1838 give it a place upon the record

The statutory provisions, relating to deeds, which have any bearing on the question made upon the absence of the seal, are contained in the act of April 20, 1838. Sections 2 and 3 of that act are as follows:

SEC. 2. *And be it further enacted*, That every conveyance, covenant, agreement, and other deed (except deeds of trust and mortgages), which shall be acknowledged or proved, and certified according to law, and delivered to the clerk of the proper court, to be recorded within six months after the

sealing and delivery thereof, shall take effect and be valid as to all persons from the time of such acknowledgment or proof; but all deeds of trust and mortgages, whensoever they shall be delivered to the clerk of the proper court to be recorded, and all other conveyances, covenants, agreements, and deeds, which shall not be acknowledged, proved, or certified, and delivered to the clerk of the proper court to be recorded within six months after the sealing and delivering thereof, shall take effect and be valid, as to all subsequent purchasers for valuable consideration, without notice, and as to all creditors, from the time when such deed of trust or mortgage, or such other conveyance, covenant, agreement, or deed, shall have been so acknowledged, proved, or certified, and delivered to the clerk of the proper court to be recorded, and from that time only: *Provided, however*, That if two or more deeds conveying the same property, after having been so acknowledged, or proved and certified, be delivered to the clerk to be recorded on the same day, that which shall have been first sealed and delivered shall have preference in law.

SEC. 3. *And be it further enacted*, That every title-bond or other written contract in relation to land may be proved, acknowledged, certified, and recorded in the same manner as deeds for the conveyance of land; and such proof or acknowledgment, and certificate, and the delivery of such bond or contract to the clerk of the proper court to be recorded, shall be taken and held to be notice to all subsequent purchasers of the existence of such bond or contract.

The conveyance from Eaton, trustee, if not sealed, was intended as an actual, present conveyance of the estate vested in the trustee, and in equity did pass it.—(Lowry vs. Tew, 3 Barb., Ch., 407; Owen vs. Frink, 24 Cal., 171; Wadsworth vs. Wendell, 5 John's Ch., 224.)

The plaintiffs cannot avail themselves of the defect in the deed, because they are not injuriously affected by it (Gibbs vs. Cunningham, 1 Md. Ch., 44); and because they can have no interest in the correction of the defect.—(Washb. Real Prop., Vol. 1, Star., p. 500; Corder vs. Morgan, 18 Vesey, Jr., 344.)

It is submitted that the testimony shows conclusively that the sale was fairly made, and that the price was a rea-

sonable one. But if the sale was fairly made it will not be disturbed for inadequacy of price.)—Woodhull vs. Osborn; 2 Edw. Ch., 616; Williamson vs. Dale, 3 John. Ch., 290; Am. Ins. Co. vs. Oakland, 2 Paige, 100; Cooper vs. Gilbraith, 3 Wash. C. C., 546; Adams' Eq., 4 Am. ed., 393, cases in note; Hill on Trustees, 152, cases in note; Seymour vs. De Lancey, 6 Johns' Ch., 222; Eyre vs. Potter, 15 How., 60; Hamilton vs. Labukee, 51 Ills,, 415; Hubbard vs. Jarrell, 23 Md., 66.)

The appellants seem to rely upon the asserted fact that Eaton, the trustee, was the actuary of the Trust Company; this does not appear as a fact established by the proof or admitted by the pleadings, but if it were true it would be immaterial. The fact of being actuary, gave him no interest in the assets of the company beyond his salary; the Trust Company was not a stock concern.

The Freedman's Savings and Trust Company was organized by virtue of an act of Congress approved March 3d, 1865, (13 Stat., 510,) the third section of which is as follows:

SEC. 3. *And be it further enacted*, That the business of the corporation shall be managed and directed by the board of trustees, who shall elect from their number a president and two vice-presidents; and may appoint such other officers as they may see fit; nine of the trustees, of whom the president or one of the vice-presidents shall be one, shall form a quorum for the transaction of business at any regular or adjourned meeting of the board of trustees; and the affirmative vote of at least seven members of the board shall be requisite in making any order for, or authorizing the investment of any moneys, or the sale or transfer of any stock or securities belonging to the corporation, or the appointment of any officer receiving any salary therefrom.

The fifth section of the act declares that the object of the corporation is "to receive on deposit such sums of money as may, from time to time, be offered therefor, by or on behalf of persons heretofore held in slavery in the United States, or their descendants, and investing the same in

stocks, bonds, treasury notes, or other securities of the United States."

It was to the trustee's advantage to secure as high a price as possible. By the terms of the trust his commission was fixed at five per centum of the amount of the purchase-money received for the property at the sale. Hence there could have been no conflict of duties, even if the trustee was actuary and trustee at the same time. It is neither unusual nor unlawful for the creditor himself to be clothed with the power of sale in mortgages containing such powers.

Both Bradley and Shepherd are purchasers for an adequate consideration without notice. It is true that they are chargeable from the record with notice of the omission of the seal in the deed from Eaton to the Trust Company; but this omission did not suggest any latent equities in the complainants. It was patent from an inspection of the record, that this defect was a mere accident. Bradley took the advice of counsel in reference to the title, and certainly cannot be charged with want of diligence. The title, so far as the record discloses it, was a good title at law, and innocent purchasers, for value, cannot be charged with notice of such equities as are relied upon here. This court has used strong language on this subject:

"If a suit be brought to set aside a conveyance obtained by fraud, and the fraud be clearly proved, the conveyance will be set aside, as between the parties; but the rights of third persons, who are purchasers without notice, for a valuable consideration, cannot be disregarded. Titles which, according to every legal test, are perfect, are acquired with that confidence which is inspired by the opinion that the purchaser is safe. If there be any concealed defect, arising from the conduct of those who had held the property long before he acquired it, of which he had no notice, that concealed defect cannot be set up against him. He has paid his money for a title good at law; he is innocent, whatever may be the guilt of others, and equity will not subject him to the penalties attached to that guilt. All titles would be insecure, and the intercourse between man and man would

be very seriously obstructed if this principle be overturned.—(Fletcher vs. Peck, 6 Cranch, 133; see also Bean vs. Smith, 2 Mason, 272; Doe vs. Martyr, 4 B. & P., 332; Evelyn vs. Templar, 2 Brown Ch. R., 148; Jackson vs. Henry, 10 John., 197; Jackson vs. Walsh, 14 John., 415; Somes vs. Brewer, 2 Pick., 184; 4 Kent's Com., 464, (note); Hill on Trustees, 516 and cases; 2 Ldg. Cases in Equity, 67, 72, 117; Montague vs. Dawes. 12 Allen, 397; Hamilton vs. Labukee, 51 Ills., 415; Prevo vs. Walters, 4 Scam., 35.)"

The complainants are chargeable with laches especially as against innocent purchasers for value. The sale was made to the Trust Company July 1, 1872, and by the company to Bradley June 16, 1873, and by Bradley to Shepherd August 27, 1874. The lease to the Post Office Department was concluded in June, 1873. The writ of possession was executed December 9, 1872.

The plaintiffs suffered themselves to be dispossessed by judgment and execution at law, and although laboring under no disability, have kept silence, and have taken no step to assert or secure their pretended claims by notice or otherwise, until nearly *three* years after the sale, and two years after the rights of innocent third parties have intervened, valuable improvements made on the premises, and a valuable lease effected, and because of their delay, under the circumstances, they are entitled to no consideration in a court of equity.—(Adams' Eq., 393; Montague vs. Dawes, 12 Allen, 397; Olcutt vs. Bynum et al., 17 Wall., 44, 64; Hamilton vs. Labukee, 51 Ills., 415; Scott et al., vs. Freeland, 7 Sm. & M., 409; Twin Lick Oil Co. vs. Marbury, 91 U. S., 587.)

The decree of the Supreme Court of the District of Columbia ought to be affirmed.

ENOCH TOTTEN,

Counsel for the ***F. S. & T. Co. & Comrs.***